

1                               NEW JERSEY STATE LEGISLATURE  
2                               SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE  
3                               PUBLIC HEARING

4 \_\_\_\_\_

5 In the matter of:  
6 State of New Jersey Commission of                Transcript of  
7 Investigation Report on "New-Home                Proceedings  
8 Construction in New Jersey"

9 \_\_\_\_\_

10

11                               Computer-aided transcript of hearing  
12 testimony taken stenographically in the above-entitled  
13 matter before KAREN L. DeLUCIA, a Certified Shorthand  
14 Reporter and Notary Public of the State of New Jersey,  
15 at the Manalapan Township Municipal Complex, 120 Route  
16 522, Manalapan, New Jersey, on Tuesday, September 19,  
17 2006, commencing at 7:30 p.m.

18

19

20                               GUY J. RENZI & ASSOCIATES  
21                               GOLDEN CREST CORPORATE CENTER  
22                               2277 STATE HWY. #33, SUITE 410  
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1 A P P E A R A N C E S :

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4 COMMITTEE MEMBERS :

5 SENATOR RONALD L. RICE

6

7

8 COMMITTEE STAFF :

9 ROBERT C. ROTHBERG, Committee Aide

10 JULIUS BAILEY, Senate Majority

11

12 ALSO PRESENT :

13 SENATOR ELLEN KARCHER

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1           SENATOR RONALD L. RICE: Good evening. First  
2 of all, good evening to you. Let me apologize for  
3 the lateness of the hour. I was telling the Senator  
4 that I'm going to work with her to see if we can  
5 find some transportation funds for 9. I've been  
6 traveling 9 for many years in New Jersey and for  
7 some reason we can't seem to get 9 right. But we  
8 can't get 1 right either, so it's a numerical thing.

10           Let me just say it's good to be here. And I  
11 want to thank the Senator for inviting our  
12 committee to come out to visit you tonight. I am  
13 the chairman. My name is Ronald L. Rice. I'm a  
14 New Jersey State Senator and I represent the 28th  
15 Legislative District. The 28th is really now  
16 Belleville and Bloomfield, parts of the City of  
17 Newark and all the township of Irvington. In the  
18 past it included Maplewood and South Orange, New  
19 Jersey. Your problems are our problems, New  
20 Jersey is one state, but as residents we tend to  
21 share the same common problems within our  
22 communities.

23           There are a lot of things we're doing in  
24 Trenton as you read about it. And there was a  
25 very difficult time but I think the thing that

1           disturbs me as a person and as a leader, and  
2           Senator Karcher and I had these conversations, is  
3           as we grow economically in this State and we try  
4           to create affordable housing and make housing  
5           available for moderate and upper income people,  
6           there are many, many abuses. And they're starting  
7           to come to light now.

8           As a result of that, complaints we receive  
9           throughout the State, the State Criminal  
10          Investigation Commission has under the direction  
11          of government and with the direction of the U.S.  
12          Federal Government, meaning the U.S. Attorney  
13          General's office, to start holding extensive  
14          hearings to help us get a grip on exactly what  
15          were the problems as best we could tell and what  
16          were the problems that are unique to the kinds of  
17          things we're doing in New Jersey, as well as those  
18          problems that are common to development of housing  
19          stock in New Jersey where you work very hard to  
20          earn your dollars; work very hard to invest and  
21          have a place you can call home.

22          As a result of that they came up with many,  
23          many recommendations. Many of the recommendations  
24          we agree with; some we're not so sure. We think  
25          we may have to make them tougher and tweak.



1           I just wanted to let you know, for those who  
2           may not know, and some of these things I've seen  
3           at other hearings, is that number one for us to  
4           accomplish anything in Trenton is not Senator  
5           Karcher doing it by herself. She will argue the  
6           case for you but she has to get 20 other Senate  
7           members to support her in her efforts to get 21  
8           votes. And sometimes we come up short because the  
9           State is big and everyone represents a district  
10          with different opinions all the time and sometimes  
11          it's hard to get in. But I can assure that we're  
12          going to have legislation passed before the 1st of  
13          the year, hopefully on both Houses and to the  
14          Governor's desk based on the SCI recommendations;  
15          based on our collective efforts and what we know.  
16          I call that empirical data; we live with this  
17          stuff every day. And hopefully it will give back  
18          to the consumers rights that they didn't have and  
19          also take some of the things that maybe we did not  
20          tighten up in the past to make it more beneficial  
21          to you as homeowners and families a lot better.

22                 And so tonight I'm here to listen. And I'll  
23                 probably hold another hearing outside of Trenton  
24                 and then we'll go back into Trenton and we'll  
25                 deliberate on the Bills that we have in. We'll



1 listen to the additional debate on behalf of our  
2 colleagues and with our colleagues and ultimately  
3 we'll have a compromise that everybody can live  
4 with to help the residents of our state.

5 With that, this is staff here. The things  
6 that you say, let me just indicate to you, are  
7 being recorded verbatim unless you're  
8 misunderstood in terms of the spelling. So please  
9 be respectful as speakers. I take the time to  
10 come out day and night; I'm up and down the State  
11 as to where I am. I want to hear. I'm not  
12 argumentative. I'm firm and fair. And this is a  
13 learning process for us. We want to make sure  
14 that there are things that we have heard -- that  
15 there are things that we have not heard during the  
16 hearings so that we can make the legislation as  
17 beneficial as possible.

18 With that, I'm going to turn this meeting  
19 over as the Chair to your Senator, Senator  
20 Karcher, let her Chair this meeting. We'll give  
21 you an opportunity to speak and we'll listen and  
22 we'll try to respond as best we can.

23 Once again, thank you very much for having me  
24 in your lovely township.

25 SENATOR ELLEN KARCHER: Thank you Senator Rice.



1           I know from experience over the last few  
2           years what passion you bring to everything that  
3           you do; and particularly I've had the opportunity  
4           to serve with you on committees. This is a  
5           Committee that I do not serve with the Senator on  
6           but I have invited him here, he graciously  
7           accepted, and he is here to listen. Exactly as he  
8           said, he is here to listen; listen to your  
9           concerns. You are my neighbors; some of you are  
10          my friends; and this is something that we need to  
11          as a community come together and be able to  
12          solve. The State has taken an active role through  
13          their investigation and the development of the SCI  
14          report. Those recommendations are for us to have  
15          a road map moving forward to make sure that  
16          this -- the kind of concerns and complaints that  
17          I'm sure we're going to be hearing tonight won't  
18          happen again. And we can come up with ideas and  
19          resolutions to help you as consumers and  
20          homebuyers be able to resolve your problems.  
21          Senator Rice has made it very clear that that is  
22          our goal; we're here to listen.

23                 And given the hour, I will dispense with my  
24                 written comments. I will make sure that anyone  
25                 who needs them, gets them. But with that, I'd



1           like to call our first witness.

2                    SENATOR RICE:  While we're getting the  
3           witnesses together, I'm going to ask staff to kind  
4           of give you a summary of a couple of Bills that I  
5           do have in the Legislature to start the process  
6           that's based on the State Commission on Investigation  
7           report, which is here.

8                    Bob, if you can maybe discuss the contents of  
9           some of the Bills that we have in so that the  
10          public can understand where we are moving and the  
11          fact that these are based on SCI investigation  
12          recommendations, then maybe some of the questions  
13          will get answered just through that process.  Then  
14          some of the people may tell us how we can possibly  
15          make the language or make it better if we can get  
16          language accepted and approved by our colleagues.

17                   MR. ROTHBERG:  The four Bills that are on the  
18          committee agenda for this evening all have their  
19          basis in a report from the State Commission of  
20          Investigation entitled The Good, The Bad and The  
21          Ugly:  New-Home Construction in New Jersey.  I have  
22          a few extra copies here.  It is also available  
23          online on the Internet at the site that's placed  
24          on the committee agenda, obviously the agenda  
25          there, if you want to read it online.



1           The four Bills that are before the Committee  
2           this evening are S-1824, S-1825, S-1826 and  
3           S-2046. The first Bill, S-1824, is entitled The  
4           New Homebuyers Bill of Rights Act. And it would  
5           establish a Bill of Rights for buyers of new homes  
6           combining several of the recommendations from the  
7           report. I do not want to belabor the point and  
8           keep us here overly long but it would, among some  
9           things, prohibit increases in the sales price of a  
10          new home without the agreement of the home buyer.  
11          Ensure a fair and realistic opportunity to seek  
12          mortgage financing. Allow homebuyers to require  
13          the holding of escrows for items that are not  
14          complete. Make it clear that incomplete items  
15          noted at closing through which no escrow funds are  
16          held are defects that the builder is required to  
17          correct. Require deposit funds to be held in  
18          escrow. On and on. It's really a Bill of Rights  
19          for purchasers of new homes.

20                 S-1825 is a reform to the New Home Warranty  
21                 and Builders Registration Act. It would expand  
22                 the definition of major construction defect to  
23                 include any substantial failure to meet applicable  
24                 structural requirements. It would expand the time  
25                 periods for warranties for existing types of



1 defects. It would expand the types of defects  
2 that would come under the warranty program. It  
3 would provide a ten-year warranty for fire safety  
4 defects and serious construction defects. Require  
5 owners to be afforded the option to have their own  
6 contractors correct serious construction defects  
7 after their homebuyers have failed. There are  
8 several other provisions, including the provision  
9 for civil penalties of up to \$5,000 per violation  
10 for violations of this statute.

11 The third Bill, S-1826, would revise the  
12 State Uniform Construction Code Act. It would  
13 authorize the Department of Community Affairs to  
14 direct local enforcing agencies that are not  
15 performing necessary inspections in a timely  
16 manner to allow the owner to have inspections  
17 performed by engineers or architects paid by the  
18 owner but independent of the owner's supervision  
19 or control. This would provide a procedure for  
20 getting inspections done properly and in a timely  
21 manner whenever a local enforcing agency is unable  
22 to do the job properly in a proper time frame.

23 The Bill would also protect homebuyers by  
24 bringing lot improvements within the scope of the  
25 protections provided by the State Uniform



1 Construction Code. The State Commission of  
2 Investigation during their hearings heard many,  
3 many problems relating to lot improvements which  
4 are not currently under the Construction Code.  
5 The Bill would increase the maximum penalty that  
6 could be imposed upon violators of the  
7 Construction Code from the existing penalty of  
8 \$2,000 to \$5,000 in order to promote compliance  
9 with the code.

10 Finally, the Bill will affirmatively require  
11 a construction code or sub-code official to notify  
12 the Department of Community Affairs if the  
13 official believes that a home has passed  
14 inspection or received a C of O, Certificate of  
15 Occupancy, although the home does not satisfy code  
16 requirements. And the Bill would allow the  
17 Commissioner to suspend an official who fails to  
18 comply with this provision.

19 The final part of this package, Senate Bill  
20 number 2046, would enhance certain protections  
21 afforded purchasers in planned real estate  
22 developments. Planned real estate developments  
23 are housing developments in which some parts of  
24 the property are under common ownership and  
25 control. The Bill would enhance protections



1       afforded under current law to those purchasers in  
2       order to provide bonds or other securities to  
3       ensure proper completion of common elements.  
4       Provide new boards elected by unit owners after  
5       transition from the developer's control with an  
6       engineering survey of the common elements.  
7       Provide full financial accounting for the  
8       association during the period of developer  
9       control. Authorize the minority of the board  
10      that's chosen by unit owners during developer  
11      control to act on behalf of unit owners and to  
12      bring actions against the board itself. At  
13      present, there's no mechanism whereby unit owners  
14      can act to prevent an association that's still  
15      under the developer's control from taking actions  
16      that can be detrimental to the current or future  
17      interests of the unit owners.

18               Finally, the Bill would establish procedures  
19      allowing homeowners and associations and unit  
20      owners to file claims arising under the New Home  
21      Warranty and Builders Registration Act for defects  
22      affecting the common elements.

23               Senator, that's a synopsis of the four Bills  
24      that are under consideration.

25               SENATOR ELLEN KARCHER: I'd like to first call



1 Violet Peterson, and if it's okay, Salvatore and  
2 Sonia Giovine together.

3 Is that okay with you?

4 I know that you're neighbors. I've been to  
5 your homes. I know that this has been an ongoing  
6 concern for you.

7 Would you please state your name and spell  
8 your names, as well.

9 MR. GIOVINE: My name is Salvatore Giovine,  
10 G-i-o-v-i-n-e.

11 MS. PETERSON: My name is Violet Peterson;  
12 V-i-o-l-e-t, P-e-t-e-r-s-o-n.

13 Senator Rice and the members of the  
14 Committee, first of all, I would like to thank  
15 Senator Rice for taking his time to help my  
16 neighbors and a couple from South Jersey. I  
17 usually see elected officials taking effort to  
18 help only when they're running for office so they  
19 can win that election. Senator Rice from a  
20 different district and actually helping one of my  
21 neighbors, you're rare in the State. We need more  
22 people like you. I also want to thank the other  
23 Committee members, who are not here, to take their  
24 time to hear from the homeowners.

25 Like the other homeowners in this



1 development, we have been struggling for six years  
2 to bring our home to code compliance. In  
3 Manalapan Chase all the issues the homeowners  
4 dealt with were code violations.

5 Senator Rice said in the Asbury Park Press  
6 that the problems in new home construction don't  
7 represent large majorities of the builders and  
8 contractors. But from the SCI hearing and State  
9 Committee's own hearing, we know some of the  
10 biggest developers in the state and country have  
11 created this crisis for homeowners. This is why  
12 the Senators are holding hearings.

13 If you look at the UCC and the BOCA book,  
14 they look pretty good. But many homeowners with  
15 experience will tell you how the builders, town  
16 construction officers, the DCA manipulate the UCC  
17 and the BOCA book to their advantage. All we are  
18 here was to ask the State, the DCA, the township  
19 to enforce the laws.

20 What do we want to accomplish tonight?

21 We want to make sure that established laws  
22 are enforced. Make changes in the laws to prevent  
23 this crisis from ever happening again.

24 For the record, I want to state that I sent  
25 five email comments, part one and two, with a



1 suggestion of the Senate Bills S-1824, S-1825,  
2 S-1826 to S-2046 on August 21 and August 22,  
3 2006.

4 I have some additional suggestions tonight.

5 I read the press release from Senator Rice  
6 stating the measure will authorize the Department  
7 of Community Affairs to direct inadequately  
8 staffed agencies to have developers pay for  
9 inspection to perform by independent engineers and  
10 architects. This sounds good but in our  
11 experience it doesn't work. In our development  
12 the builder hired an engineer and the engineer  
13 told the homeowners that the engineer would only  
14 do what the developer told them because they paid  
15 only for that. More to the point, there was no  
16 accountability for developer's engineers at all.  
17 The township used the developer's engineer  
18 statement as God's word. The engineer report only  
19 addressed some code violations, not all.

20 The engineer hired by the homeowners were  
21 ignored by the township, the appeal board and the  
22 DCA. We have similar stories from homeowners in  
23 South Jersey at the public hearing in Glassboro.  
24 Any professional hired should write their report  
25 to the township because the State authorized this



1 to take place. Any engineers' report on the  
2 homeowner's home should be addressed to the  
3 township not the developer who has been charged  
4 with the code violation.

5 What good is that when the developer's  
6 engineer writes the report to the developer?

7 When the township gave the NOV, the township  
8 authorized the developer's engineer for  
9 inspection, the township told the homeowners to  
10 let the developer's engineer in. When things go  
11 wrong, the township has claimed it was a contract  
12 issue even though the township gave the NOV and  
13 the work permits. To avoid this practice, why not  
14 the State hire licensed engineer. I was told by  
15 the DCA they have licensed engineer on staff.

16 Senators you know that if the builders build  
17 homes correctly and the construction officer did  
18 their job, we would not need engineers for  
19 inspection at all or waste any of the builders'  
20 money.

21 My personal opinion is that the top  
22 management of the DCA is builder friendly. For  
23 years they were protecting the builders and local  
24 code officials without any punishment. The only  
25 way to solve this problem is to get rid of the top



1 management in DCA. If code and sub-code officers  
2 and DCA officials misrepresent the facts and give  
3 false testimony under oath, they should be fined  
4 and dismissed. In our experience, whatever the  
5 code officer or DCA officials say become a fact.  
6 There's no recourse for the homeowners to get the  
7 truth out.

8 The Construction Board of Appeals process is  
9 also broken. There should be a uniform rule for  
10 the board of appeals across all 21 counties in New  
11 Jersey. It is a joke there is a mix of made up  
12 procedures that are not even followed and the  
13 process that change as the time goes on.

14 When the township cites a builder of code  
15 violation, there should be a clear statement of  
16 the violation. In our development one notice of  
17 violation was given to all 52 homes. To this day  
18 it's not clear what was included; what was done;  
19 what was not done; what was inspected. The Senate  
20 Bill should state that a notice of violation or  
21 work permit must be issued separately for each  
22 violation. If you have 20 violation, 20 notice of  
23 violation must be written out for that home  
24 regardless the same violation found in other  
25 homes. That goes for the work permits; permits



1 that were issued for 20 NOV repairs. By doing  
2 this, the town or the developer cannot mislead or  
3 manipulate the town homeowners by saying that  
4 violation is not for your home.

5 The UCC Consent Form 101 should not be used  
6 retroactively or backdated for repairs that be  
7 done years before. In our home, the UCC Consent  
8 Form was used by the township in 2006 for the  
9 repair done two or more years ago. They clearly  
10 knew what the UCC Consent Form is for. State  
11 officials should not misuse and abuse the UCC  
12 Consent Form for their advantage. The DCA website  
13 should provide copies of the UCC and international  
14 building code for all homeowners to read. Just as  
15 the Senator states, since the State is planning to  
16 authorize developers to pay for inspection, the  
17 State can authorize step-by-step procedures for  
18 common building repairs; example stucco  
19 application. These repairs should be on the web  
20 site so consumers can educate themselves and hold  
21 contractors accountable. The name and the contact  
22 information for public officials and code  
23 officials should be in the website and what each  
24 officer in charge of so there won't be any  
25 misinformation about who is in charge of the



1           warranty in the state.

2                   After the improvement in established law and  
3           the new laws who is in the State besides the DCA  
4           will see the building code is faithfully  
5           executed?

6                   Let's go one step forward. If the homeowners  
7           are still in the same situation a year from now,  
8           where will they go to get the code issue  
9           addressed?

10                   We can't repeat the same circle again. We  
11           are tired of hearing from public officers that we  
12           do not have the jurisdiction. I simply cannot  
13           understand why we have the laws but no one has the  
14           jurisdiction. We cannot have one without the  
15           other. No doubt we are in a crisis and the State  
16           cannot function in this way. The State Bill  
17           should require someone to oversee the DCA publish  
18           on the website the official procedure and the  
19           contact information for the officer who do have  
20           the jurisdiction; they have to be held  
21           accountable.

22                   Senator Rice has introduced these Bills with  
23           modest changes to establish law with the promise  
24           to make better but this isn't good enough. As the  
25           Senator mentioned in the Asbury Park Press, we



1        need laws so that we don't -- this doesn't happen  
2        again. After all we have gone through, I should  
3        not read in the newspaper about this problem ever  
4        again. Then the homeowners have accomplished what  
5        they came here to do tonight.

6                Senator Rice stated in the Press the words of  
7        the homeowners will provide fodder he could use  
8        during negotiation with law makers should his  
9        measures face criticism.

10               Well, we have generally two ways to bring  
11        about social change. Change can be achieved by  
12        legislation or inspiration. Law makers are  
13        forever changing the laws and writing new laws.  
14        But even laws on the books are difficult to  
15        enforce unless a majority of the population agrees  
16        with them. But when everyone inspire a new way of  
17        acting, they will voluntarily change their  
18        behavior.

19               Senator Rice, when the law makers vote for  
20        these improved Bills, please invite the  
21        homeowners. We the homeowners will stand behind  
22        you. The homeowners inspire to support your way  
23        of thinking and failure only comes from not trying  
24        at all. So let's stand together and make it  
25        happen.



1 Thank you.

2 SENATOR KARCHER: Thank you.

3 Would you state your name for the record,  
4 please.

5 MRS. GIOVINE: Sonia Giovine. 36 Molly  
6 Pitcher Drive.

7 Senator Rice and members of the Committee,  
8 thank you once again for allowing me to address  
9 the Committee.

10 I spoke before about my situation. The key  
11 issue that I have addressed is your Bill and your  
12 Bill is time now. The Senator Bill should have  
13 strict time limit that favors the homeowner, not  
14 the developer or the officials that fail to find  
15 the code violation in the first place.

16 In our case, the stucco violation in our  
17 development was first discovered in 2001. It is  
18 five years later and still the stucco work is not  
19 done. To this day I have not received a complete  
20 revised specification for the repair of my house.

21 I want the Senators know that what homeowners  
22 have to go through and get violations addressed in  
23 the our homes. I will give you one subject for an  
24 example of the stucco violation.

25 August of 2001 Mr. John Major of the DCA came



1 to do inspections of my house for code  
2 violations. I show him the stucco application;  
3 what he respond was that it's not my call. So he  
4 did not address the stucco issue in his report.

5 After the DCA inspection the developer's  
6 engineer came to do their inspection for my house  
7 but they also refuse to see the stucco again. On  
8 October 2001 a code violation for stucco was given  
9 for my neighbor's house but none of the other  
10 homes were inspected for stucco violations. On  
11 August 23, 2002 I hire an engineer to prove my  
12 case and gave the engineer report to Manalapan  
13 Township but the town ignore my engineer's  
14 report.

15 On August 27, 2003 Assemblywoman Claire  
16 Farragher came to my house and saw the stucco for  
17 herself. I show her Mr. Connolly's letter dated  
18 on October 18, 2002 saying the stucco was a  
19 warranty issue. Then Mrs. Farragher wrote to the  
20 Commissioner Susan Bass Levin of the DCA,  
21 requested a site visit from Mr. Connolly, Director  
22 of the Division of Code and Standards.

23 On September of 2004 Centex Homes agreed to  
24 repair the stucco. They gave the stucco  
25 specifications for my house and a permit was



1 issued by Manalapan Township. In October 2004  
2 Centex Homes removed the stucco on my house and in  
3 my opinion this was because of the SCI hearing was  
4 coming soon. For two years Centex Homes did not  
5 finish the repairs of the code violation they  
6 started. Now with the help of the Township,  
7 Centex Homes simply discarded the approved  
8 specifications for the 2004 without a legitimate  
9 professional opinion as to why these plans could  
10 not be used.

11 It will take years to get the code complaints  
12 changed. It does not matter how much proof you  
13 give the construction office, their response  
14 always supporting the developer. But our engineer  
15 report to the construction office was not  
16 mentioned at all to the public.

17 Senator Rice, to this day I did not receive  
18 the revised specifications from Centex Homes to  
19 sign my UCC Consent Form for my house. It is very  
20 strange how they are repairing these houses  
21 without the proper specifications for each home  
22 and the town approval of the specifications. The  
23 only excuse is that the homeowners have signed the  
24 UCC Consent Form without specifications.

25 The builder can build new homes in a few



1 months but it takes years to get code violations  
2 fixed. No one should take for that a few weeks to  
3 get code violations fixed but we have been waiting  
4 for years. And Manalapan Township has failed to  
5 see this repair and finish them in time.

6 The laws should include time lines and fines  
7 to the developers. And after the penalty and  
8 another one time line, they should get another  
9 penalty and should be finished until they repair  
10 it again and again.

11 Thank you.

12 SENATOR KARCHER: Thank you.

13 MR. GIOVINE: Senators, I don't have a letter  
14 but I will be very specific and go to the point.

15 Two years ago after battling about four years  
16 with Centex they agreed to fix my house. The  
17 stucco was done wrong and they agree to fix it.  
18 They came over my house; they strip my house; they  
19 took my lawn; they ripped everything there was.  
20 They put all the materials that they suppose to  
21 fix the house in front of my house and left. We  
22 haven't heard from them; we don't know nothing  
23 about it; and every time that we try to do  
24 something, they keep postponing, postponing,  
25 postponing. It's two years.



1           They want us to sign a letter of something  
2           that it's not our home; it's not in our name with  
3           no specification. It's something against the law  
4           to sign something that is not yours. And we don't  
5           do that; they will not fix our house. They send  
6           out letters, they say that if we don't sign, our  
7           house is not going to be fixed, which is a  
8           disgrace. We don't know what other things to do.  
9           We hope that you can help us.

10           Thank you.

11           SENATOR RICE: At the last time we met at the  
12           State and we said let's get some processes going  
13           to try to get some accountability, and we at the  
14           State said what you do is specifications, go back  
15           there and tell them you want the specifications  
16           directly related to your property with your name  
17           and your address.

18           Did you do that yet?

19           MR. GIOVINE: Yes, we did.

20           SENATOR RICE: And what did they do? What  
21           was their response?

22           MR. GIOVINE: We didn't get nothing yet. The  
23           only letter we got the day after we came to your  
24           office was that they were not going to fix the  
25           house. Then we got another letter after a couple



1 days.

2 MRS. GIOVINE: Read it.

3 MR. GIOVINE: Enclosed please find a copy of  
4 the September 6, 2006 letter from Maria Chetasao  
5 (Phonetic), principal clerk typist of the County  
6 of Middlesex Construction Board of Appeal  
7 indicating that hearing from the motion to dismiss  
8 the adjoining Notice of Violation and Appeal will  
9 not be heard prior to November 1, 2006.

10 Another winter is going to go by and our  
11 house with nothing on it.

12 SENATOR RICE: The reason I raise that is  
13 because a few days -- I've been in Trenton trying  
14 to deal with some other issues, like to 7:00 last  
15 night, but on my desk there's a document from the  
16 attorney.

17 MR. GIOVINE: Which attorney?

18 SENATOR RICE: Your developer in response to  
19 that.

20 I'm going to read it and then I'm going to  
21 send it to Bob, who is a member of our staff, and  
22 we're going to interpret exactly what that person  
23 is saying so it's clear. If, in fact, they are  
24 saying what I think they are saying, then I'm  
25 going to have the attorney general to intervene.



1           We have a new attorney general who I think is  
2           going to be a great attorney general. And as I  
3           said to the staff at that meeting, I don't have  
4           time to be playing with folks. Either we're going  
5           to resolve the problem under the laws we have or  
6           we can't resolve it. And that's why we are  
7           changing the laws.

8           But I want you to know based on our meeting,  
9           all of a sudden I got a document this thick on my  
10          desk. Once I read it, I'll be in touch with you  
11          because I want to get an interpretation. Either  
12          the State is going to respond and we're going to  
13          compel the DCA to move forward with some things or  
14          we're going to ask the Attorney General.

15          I just want to say to those of you here in  
16          case I'm remiss and don't say it before I leave,  
17          I'm a firm believer, in looking at some of these  
18          documents and hearing some of the complaints, that  
19          some of these entities need to be investigated by  
20          the Attorney General. The problem I've had is  
21          that we're going through a short period of time a  
22          change of Attorney General. And so when I spoke  
23          with the Acting Attorney General, I said, look, we  
24          know about the State report, SCI's report. SCI's  
25          job is to go out and hold hearings. If they find



1           that there are things that are criminal and  
2           indictable, then those things are not -- does not  
3           go any further with the SCI, they go to another  
4           agency; in this case it may be the State Attorney  
5           General or someone else. And that's where I think  
6           the ball has stopped possibly and possibly did not  
7           stop. But the Acting Attorney General, Senator,  
8           could not really tell me if an investigation was  
9           going on and she gave me the legal stuff. But I  
10          reminded her that, number one, I'm a former law  
11          enforcement officer. I'm not asking for  
12          information as to the substance of an  
13          investigation, I just wanted to know if there was  
14          an ongoing investigation with any companies,  
15          period. And that is not necessarily privileged  
16          information, depending on what you want it for.

17                 But I believe there are one or two entities  
18          that need -- we need to go further with on the  
19          prosecutory (sic) side of the investigation by the  
20          Attorney General to deal with. And I stand by my  
21          statement in the Asbury Press that the majority of  
22          the builders in New Jersey, from my experience,  
23          and I've lived in New Jersey for over 50 years,  
24          are good developers; they do their jobs; and the  
25          majority of the subcontractors. The problem



1 happens to be, as you say, a handful of  
2 developers, mostly bigger developers, at least  
3 I've been looking at with the problems, where  
4 there's real no accountability and money may be  
5 buying them through this process. But we're going  
6 to try to figure out how to break those barriers.  
7 Let me assure you of that. I am trying to get the  
8 law to where it should be.

9 So I'll be back in touch with you.  
10 Hopefully -- give me a little time.

11 MR. GIOVINE: What I would like to know is  
12 how they can send me a letter telling me that time  
13 has expired and they are not going to fix my house no  
14 more after rip it off?

15 SENATOR RICE: In your case -- let me just  
16 ask the public, because there may be others and  
17 you may not be aware of this.

18 The thing that disturbs me is I'm going up  
19 and down the State and I'm reading documents and  
20 I'm hearing the problems of homeowners. These  
21 problems are different. What I found interesting  
22 about your case was that the contractor agreed in  
23 the past, took the problem, acknowledged there was  
24 a problem, agreed to fix the problem, you agreed  
25 to work with them and letting them fix the



1           problem, and it was an agreement that you had to  
2           sign the document authorizing them to come back.

3           MR. GIOVINE: Right.

4           SENATOR RICE: So what bothered me was they  
5           send you a document because the mediator said that  
6           they have to give you the specifications of your  
7           building.

8           MR. GIOVINE: Right. Yes.

9           SENATOR RICE: You get the specifications.  
10          You look at them and from your opinion, based on a  
11          lack of information, you don't believe those specs  
12          are for your building so all you did was ask for  
13          the correct specs before you signed permission to  
14          come in to do the job.

15          MR. GIOVINE: Right.

16          SENATOR RICE: And for someone to argue about  
17          that, even -- and I think the document, when I  
18          started to read a summary of it, I think someone  
19          sent me a letter saying, well, these are the specs  
20          for the house because these specs apply to all the  
21          buildings, they're the same specs. Well, it seems  
22          to me that common sense would dictate, Senator,  
23          that if my only beef with this couple is signing a  
24          document so I can get my work out of the way, I  
25          would have just went to the office and typed your



1 name and address on the thing and said that's  
2 yours. At least I would have got that far and  
3 make you feel comfortable.

4 MR. GIOVINE: We don't have a name or  
5 address.

6 SENATOR RICE: For someone to leave a barrier  
7 on something as small as that in correcting a  
8 problem as big in a development makes me very  
9 suspicious; by nature makes me suspicious.

10 So we'll be back in touch with you.

11 MR. GIOVINE: Thank you.

12 SENATOR KARCHER: Actually, I think this  
13 behavior was documented in the SCI report. They  
14 called it lulling; lulling on the part of the  
15 builders. Kind lull you into the sense of we're  
16 going to take care of this, we'll just draw you  
17 along, but more and more time goes and more and  
18 more times goes. And as you said, you're going  
19 into how many winters is this now?

20 MR. GIOVINE: The third winter.

21 SENATOR KARCHER: Your third winter with the  
22 side of your house exposed.

23 MRS. GIOVINE: Two years ago you came to our  
24 house. You saw my house, remember.

25 SENATOR KARCHER: Yes.



1           MR. GIOVINE: Not only that, we were promised  
2           this summer at the last meeting that we have in  
3           New Brunswick that our house was going to be one  
4           of the first.

5           SENATOR KARCHER: It's clear, as Senator Rice  
6           said, there are bad actors here. That's what this  
7           comes down to, that there are -- the vast majority  
8           of builders are fine builders but when you have  
9           some bad actors, Monmouth County seems to be a  
10          place where we've had this tremendous growth so we  
11          might have been more ripe for those bad actors to  
12          come in, make a quick buck, do what they needed to  
13          do and get out and really have left so many  
14          homeowners, 52 homeowners in your development  
15          holding the bag, 400 in Wall. I mean, this is  
16          something that Monmouth County is experiencing and  
17          that's why we're having this hearing tonight.

18          MR. GIOVINE: What I don't like is why the  
19          Township is not doing anything for us.

20          SENATOR KARCHER: And those are things that  
21          are subject to investigation and we will be moving  
22          forward on those, as well.

23          MR. GIOVINE: Thank you.

24          MRS. GIOVINE: Thank you very much.

25          SENATOR KARCHER: I want to keep this in the



1 neighborhood and hear from Mr. Ma. And then after  
2 that I understand Assemblywoman Beck is here. But  
3 if Mr. Ma would come up first just so we can have  
4 some of the neighbors who are experiencing  
5 situations from the same builder.

6 MR. MA: Good evening, Senators. It's  
7 Michael Ma. 44 Molly Pitcher Drive.

8 I know the Senator proposed to change the law  
9 and I'm glad to hear that but in my opinion, no  
10 matter how perfect the law is, if nobody is  
11 enforcing the law or nobody is doing their job,  
12 then it's useless.

13 I can give you some example.

14 When I purchased my house, okay, right at  
15 almost like nine, ten years ago, and the Township  
16 didn't do any inspection and they admit that later  
17 on. So then later on like starting at 2000, 2001  
18 we started finding all the problems, code  
19 violations on the house. So then we talk to  
20 Township and they won't do anything. So we have  
21 to hire our own private engineer to show the  
22 Township there was some code violation but they  
23 won't take it.

24 And so finally we get the DCA involved, we  
25 get a few -- but when they repair the house we



1 find more problem. In 2002 -- 2004 we found  
2 there's a stucco problem. We hired -- again, we  
3 hired a private engineer to inspect the stucco and  
4 then we show to the Township. Township doesn't  
5 want to hear it. At that time the developers was  
6 working with me on my stucco. So they agreed the  
7 stucco is a code violation but they refuse -- they  
8 call it a ring joint and the stone is a code  
9 violation. Here's the pictures original of my  
10 house. I have the stone here and then stucco on  
11 the side and then the bottom part. They only say  
12 the stucco is code violation but not the stone.  
13 But as matter of fact, my engineer says behind the  
14 stucco and the stone is all the cement, there's no  
15 drainage, so that's a code violation. But then  
16 the developer refuse; they don't agree. So after  
17 they took off my stucco they just walk away. They  
18 refused to do that.

19 And that's how my house looks last winter.  
20 I think the other people can see. And then they  
21 don't give me any reason, they just walk away  
22 because they don't want to fix the stone and the  
23 ring joint. So then we filed a hearing in  
24 Monmouth County but because of conflict of  
25 interest, it was routed to Middlesex County. And



1 we were hoping we have some justice and  
2 jurisdiction out of the hearing.

3 But before that let me go back a little bit.

4 When the Township -- when the builder walk  
5 away from the repair, I call the Township.  
6 Township keep saying this is contractual issues,  
7 not a code violation. Until we gather more  
8 homeowners, you know, fight with the Township and  
9 then we have a meeting with the Township, in that  
10 meeting we have our engineer to provide evidence,  
11 the code to show the Township this is a code  
12 violation, what the code says, but the Township  
13 still insist it's not a code violation. And even  
14 the builder agreed the stucco is a code violation  
15 but Township still insist it's not.

16 So I just wondering what's the qualification  
17 for the so-called law enforcement to enforce the  
18 official.

19 And then in Middlesex County appealing, when  
20 we tried to -- we got all the evidence, we tried  
21 to show the board what we have in our site, the  
22 evidence, they don't want to listen to us. They  
23 totally shut us down. And then they just don't  
24 want to talk about it. And they reject our case.  
25 They says you have to -- because we have another



1 issues from the 2002, which is the other repair,  
2 they haven't done it in time, so they said they  
3 don't want to hear anything.

4 So where we get the justice? That's the part  
5 I don't understand. So they are suppose to  
6 enforce the law.

7 And then in the meeting our formal Township  
8 attorney told us our Township official doesn't  
9 know anything about this, they cannot do himself.  
10 They suggest we hire either our private engineer  
11 or go through the lawsuit. But this is code  
12 violation. Why the homeowner have to spend so  
13 much money to hire a private engineer to do their  
14 job; this is to inspect the house before they  
15 issue the CO but they didn't do. So now we have  
16 to spend so much money and then we show the  
17 Township the code, and even the builder agrees  
18 it's a code violation in the hearing. Before the  
19 start of the period, the builder tried to settle  
20 -- they have a settlement. They say that they  
21 agree the ring joint and the stucco, they both are  
22 code violation and they agree to repair it. So  
23 then why they didn't agree two years ago and they  
24 just walk away from my house. And then when we  
25 tell them to come back for the repair, they said



1 they can't because my case hasn't been heard yet.

2 So now my case was heard on May 25, 2006, now  
3 it's September and they still haven't started the  
4 repair. So I have a feeling my house will be just  
5 like the Giovine's. They probably just walk away  
6 from now to winter.

7 So that's why I say no matter how good the  
8 law will be, if nobody going to enforce the law,  
9 they're going to let them do whatever they want,  
10 what's the law for?

11 In this case the Township doesn't do the job  
12 and nobody can do anything. We brought this issue  
13 to the Township and our former mayor even say to  
14 us, why don't you guys just fix yourself and sue  
15 us.

16 SENATOR RICE: You said your former mayor?

17 MR. MA: Former mayor, William Scherer.

18 SENATOR RICE: Definition of former means no  
19 longer.

20 MR. MA: Well, that's because in our  
21 Township, everyone is just mayor for one year.

22 SENATOR RICE: Let me, if I can respond  
23 through the Chair, to say to the public here, I  
24 guess the most frustrating -- let me say, I've  
25 been a Senator for 21 years, 16 on the City



1 Council in the City of Newark, and so I understand  
2 this stuff quite well. I understand the  
3 hardships. The most frustrating part of my career  
4 is being the law maker. Unfortunately, our  
5 constitution says separation of power; we write  
6 these laws. So the first part of the process to  
7 try to help you, we have to make the laws right to  
8 give you the protection that you deserve; the  
9 protection that's necessary. Once we do that,  
10 it's incumbent upon the administration side of the  
11 Governor's office staff to enforce the laws.

12 Now, sometimes we can force them to enforce  
13 the laws by using some of the other powers we  
14 have; holding up appointments; playing politics  
15 in-house; compromise; holding up budgets. And  
16 sometimes we even try to administrate by way of  
17 legislation but the law says you can't do that but  
18 we try to do it anyway to get the enforcement.  
19 And so we try to develop relationships.

20 And what I'm saying to you, yesterday the  
21 judiciary committee met to put in place the  
22 nomination of the new Attorney General. The  
23 Attorney General came from a very strong  
24 background and a law firm that deals a lot with  
25 this kind of thing and a lot of other things,



1           too. He's a very capable and sincere person.  
2           Even though he smiles a lot, he's serious. We're  
3           just waiting for him to really take place. He was  
4           the chief counsel.

5                     As I indicated to you, I'm going to be  
6           meeting with him on behalf of the residents I've  
7           met with so far; on behalf of the reports; and on  
8           behalf of things that my gut feeling tell me as a  
9           former law enforcement officer that I don't know  
10          why someone would do lulling, if you will, when  
11          it's just a matter of saying just put the name in.  
12          If those are the right specs, then document it.

13                    We're probably going to have to go back into  
14          the law, if we haven't done it already, and make  
15          sure that every document clearly identifies what  
16          that document go through. Some of the things in  
17          the Bills that I have here - homeowners  
18          protection, buyer protection, things like that  
19          - is number increasing warranty time. But number  
20          two, there is some mechanisms for people, and they  
21          may not help you directly right now but in the  
22          future, where there are escrow dollars so there is  
23          no question; we don't have to waste time. Give  
24          them time frames and if it's not done, we just do  
25          it ourself with our folks because we're going to



1 use your money, meaning developers, et cetera.

2 In your case, you will be on my list for a  
3 talk to the Attorney General about that company  
4 that did your development. Like I said, we're  
5 going to be asking the Attorney General to meet  
6 with some of the people, not all, in these  
7 developments, unless they're all in the audience,  
8 and figure out if there's enough substantial  
9 information founded by way of fraternizing the  
10 information, by way of talking to people that want  
11 an investigation. And if, in fact, the  
12 investigation is warranted, there's some  
13 corruption out there, there's some improprieties  
14 that need to go further, grand jury, then so be  
15 it.

16 Because some of us are tired because we get  
17 locked into the newspaper, the press paint us all  
18 the same, the people paint us all the same because  
19 they're frustrated, but there are some of us, like  
20 Senator Karcher and myself and other legislators  
21 that are very serious and we're tired. We're  
22 writing laws and I'm tired of writing laws I don't  
23 need. So that's what we're going to do.

24 So your testimony, if you have a written  
25 testimony, I would like you to leave it with us.



1       If you don't have a written testimony, what I  
2       would like you to do is write up as best you can a  
3       chronology of what occurred with your property,  
4       where you are right now, the things you have done,  
5       and any documents that can back it up. You got  
6       your own engineer; what did the township say with  
7       the engineers and get the suspended hardship. But  
8       also get it to our staff so that we can continue  
9       to empower this and move forward.

10               MR. MA: Okay. Thanks.

11               Then also, if I may suggest, I think that  
12               since we're revising the law, I think we should  
13               put the high standard on our law enforcement  
14               official.

15               In our case, our Township doesn't know how to  
16               do inspection and they don't do it. Even the  
17               attorney, Township attorney told me that. So  
18               every time I call them, they ask the Township come  
19               and do the inspection, they just refuse. And then  
20               the Township lawyer told me they have no kind of  
21               knowledge and experience to do that. And then in  
22               our case -- then the Township ask the builder to  
23               do the inspection. So how can they repair if they  
24               don't do the inspection. So that part I don't  
25               understand.



1           SENATOR KARCHER:  There clearly would be a  
2           conflict there and those are the things that --  
3           the recommendations from the SCI report encompass  
4           exactly that.  That there are not trained  
5           individuals at the municipal level to do those  
6           kind of inspections.  That the code has not been  
7           up to date.  These are issues that clearly have  
8           been brought forth in the report and need to be  
9           addressed through legislation, exactly as the  
10          Senator has suggested.  And these Bills, I'm not  
11          sure what Bill number it is, but I know that it  
12          was a recommendation to make sure that there's  
13          provisions for that kind of training at the local  
14          level.  Because you don't want to be stuck again  
15          with someone coming out and not being able -- or  
16          the conflict of interest that you describe.

17          MR. MA:  Okay.

18          And my house assessed back there's a couple  
19          more other code violation and then Township still  
20          doesn't want to do inspection.  They have the  
21          builder come to do -- come to my house and  
22          basically it just wasn't inspected.  And they were  
23          there 2002, whenever they left in 2002, I told  
24          them there's a new problem but they refused to do  
25          it.  Because the Township didn't inspect my house



1 in the beginning, and now they still don't do the  
2 40 inspections, how can they ensure my house is  
3 safely enough to live in. That's another thing I  
4 don't know.

5 SENATOR KARCHER: As Senator Rice said, what  
6 you should do is make sure that you document it  
7 clearly from the beginning to the end to this  
8 point, have all that documented, forward it to  
9 me. We'll make sure it gets to the correct  
10 authorities. I think that it's clearly something  
11 in this development that I know about because of  
12 my experience here in Monmouth County knowing the  
13 kind of things that have been going on and the  
14 kind of activities that suggest potential corrupt  
15 activity that it needs to be forwarded on to the  
16 new Attorney General. So if you can do that.

17 And I just want to suggest as quickly as  
18 possible get those documents together and we can  
19 move forward and make sure that that's one of the  
20 top priorities that the new Attorney General has  
21 when he gets sworn in.

22 MR. MA: Okay.

23 SENATOR KARCHER: Thank you.

24 MR. MA: Thank you so much.

25 SENATOR RICE: As you leave the table, let me



1           indicate there are three types of inspectors out  
2           there. You have one that don't know how to do the  
3           job; you have one that know how to do the job and  
4           not going to do it; and then you have one that  
5           does the job very well in accordance with the  
6           codes as they should be doing. The Senate passed  
7           legislation, which is law sponsored by Senator  
8           Connors on my Committee, supported by Senator  
9           Karcher and our colleagues that we can terminate  
10          certain code officials. That is one thing that  
11          municipalities couldn't do in certain conditions;  
12          now they can. In the city of Newark we just had a  
13          couple terminated for knowing how to do the job  
14          but didn't do the job, if you get my drift.

15                 And so we have to continue to tighten up  
  
16          those areas, too, to hold people accountable that  
17          are doing it. Because your official should be  
18          certified and licensed by somebody and we're  
19          looking at that, too. Because there was debate  
20          how much interest should the sub-code officials  
21          have or what should the city have on board with in  
22          terms of engineers; what should that engineer  
23          really be in terms of background. So there are  
24          other things we're looking at, as well.

25                 SENATOR KARCHER: Assemblywoman Beck.



1 ASSEMBLYWOMAN JENNIFER BECK: Good evening.  
2 Good to see you, Senator. Welcome. And Senator  
3 Karcher, very nice to see you again.

4 Senator Palaia and myself had also introduced  
5 a package of Bills, roughly 12 pieces of  
6 legislation, some which are very similar to your  
7 and Senator Rice's package and some which have  
8 additional provisions. This obviously is a  
9 critical issue. I've only been in office for nine  
10 months but can tell you that we have had numerous  
11 calls, complaints and letters about the clear  
12 corruption that happened in the construction of  
13 many of the homes in Manalapan and Marlboro and  
14 the abuses that happened to the homeowners here.

15 I'd like to say before I go through some  
16 additional suggestions to the legislation that you  
17 put forward, I'd like to introduce my Chief of  
18 Staff, Nancy Fitterer. Nancy, if you would just  
19 stand up. And certainly I would like to offer the  
20 services of my office, as Senator Karcher has, in  
21 helping our citizens push these builders to do the  
22 right thing. I think it's critical that if  
23 mistakes were made, they step up to the plate and  
24 they correct them and they correct them quickly.

25 With that said, a handful of recommendations.



1           First and foremost, I know one of the things  
2           in the SCI report was that it was very difficult  
3           for them to do background checks on some of the  
4           builders and owners because they didn't have  
5           Social Security numbers and they didn't have  
6           employee codes. So that is one of the  
7           recommendations in our Bill, that at the time  
8           they're registering, that, indeed, they have to  
9           provide that information to the Department of  
10          Community Affairs as part of their registration.  
11          That's A-3211.

12          Secondarily, for repeat violators, if they're  
13          violating the State Uniform Construction Code,  
14          that that is tracked and publicized on DCA's  
15          website so that any citizen can go online and if  
16          they are considering purchasing a home from a  
17          particular builder can see what the track record  
18          of that builder is.

19          Third, that an owner is not prohibited from  
20          pursuing a lawsuit if they happen to file a  
21          complaint or a claim under their warranty, that  
22          that is not mutually exclusive. And I think that  
23          that is sort of a troublesome area right now, that  
24          if you file a warranty claim, sometimes you can be  
25          prohibited from pursuing your case in a court of



1 law.

2 Lastly, that under the Planned Real Estate  
3 Full Disclosure Act that there is a transition of  
4 documents, public documents from the developer to  
5 the homeowners association that, indeed, that  
6 developer shows that they have received all of the  
7 proper governmental approvals before they turn it  
8 over to the homeowners association. And then,  
9 indeed, if owners, while the construction is still  
10 ongoing, if they've already moved into their  
11 homes, that they are not prohibited from filing a  
12 complaint under their warranty; they are not made  
13 to wait until the rest of the development is  
14 complete.

15 And I think those are just a handful of  
16 things. Clearly the hearings were helpful and the  
17 Bill that's been crafted is a good Bill. These  
18 are simply recommendations that I think can help  
19 sort of fill out those remaining areas.

20 And I appreciate you letting me have a couple  
21 minutes tonight. Welcome to Monmouth County.  
22 It's good to see you. And good to see you again  
23 Senator Karcher.

24 SENATOR KARCHER: Thank you.

25 SENATOR RICE: Thank you Assemblywoman.



1           Some of the issues you've raised, if not all  
2           of them, may be in some of the language we have.  
3           Some of them may be in some of the recommendations  
4           that we have also that may be incorporated. But  
5           we will certainly go back and look at all of what  
6           you had to say. And I will take a look at  
7           A-3211.

8           Bob, are any of those in some of the Bills we  
9           have already?

10           MR. ROTHBERG: I believe that your newer  
11           Bill, S-2046, has the last piece that she  
12           mentioned. I also believe the disclosure piece is  
13           in one of the Bills, as well -- I'm sorry, the  
14           warranty claim as not being preempted is also in  
15           one of your Bills.

16           We've been looking at these other issues and  
17           discussing them with a variety of people and our  
18           plan is to amend the Bills to include some of  
19           these things.

20           SENATOR KARCHER: Now we're going ahead a  
21           little south and call for somebody I know in  
22           Freehold; Barbara McMorrow.

23           MRS. McMORROW: Thank you, Senator Karcher my  
24           name is Barbara McMorrow, M-c-M-o-r-r-o-w.

25           Welcome Senator Rice and members of your



1 Committee to Monmouth County.

2 I don't have any written response. I was  
3 delighted to read the article in the Asbury Park  
4 Press that you were going to be here. And I'll  
5 try to be succinct; I know the hour is late.

6 The crux of what I'm going to say is that the  
7 builder needs to be responsible. And he cannot  
8 shirk his duty and give it to the subcontractors;  
9 and the homeowner should not have to bear the  
10 brunt of tracking down the subcontractors when  
11 something goes wrong with his or her home. We pay  
12 the builder, we pay the builder a lot of money for  
13 our homes, and he should be the one who is  
14 responsible.

15 I'll give you a couple of examples of  
16 frustration that I have had.

17 We have two zone heating in our home and we  
18 have a furnace in the attic. It's a gas furnace.  
19 And a while ago I was having all my smoke  
20 detectors replaced because the builder's one were  
21 always in default and so I said rather than doing  
22 one at a time, we'll replace all of them. They  
23 went up to my attic, they said, you do not have a  
24 smoke detector or a carbon monoxide monitor in  
25 your attic and you have a gas furnace there, so I



1 instructed them to put it in. And I went to my  
2 township to ask whether or not this was in code  
3 and they told me they couldn't discuss it with  
4 me. So I offered my CO and it's not listed  
5 there. I'm really concerned that we have many  
6 homes in Freehold Township or throughout Monmouth  
7 County that have two furnaces, because we have  
8 dual systems, the furnaces are now located in the  
9 attic, and there will not be smoke detectors or  
10 carbon monoxide monitors there. I think this is  
11 something that we have to look at throughout the  
12 State of New Jersey. It will save lives.

13 The other problems that we have, for example,  
14 my upgraded kitchen cabinets fell off the wall and  
15 the builder said that's not his responsibility,  
16 that was a subcontractor. And I had to go to the  
17 subcontractor and I had to work with him and I had  
18 to pay money to get new ones installed.

19 The locks on my sliding door didn't work;  
20 they came to see it; they said there's nothing  
21 wrong with your locks. And, no, there was nothing  
22 wrong with the locks; they hadn't framed the door  
23 correctly. They said it wasn't their fault. I  
24 had to pay to have new sliding doors installed.

25 The windows, I did fight with the builder to



1        have them matching in the kitchen. I thought that  
2        would be nice, since they're right next to each  
3        other, if they looked the same. And we finally  
4        were able to get them to agree to that and they  
5        did come and they did put in a window that matched  
6        so the two of them matched. The problem was that  
7        the glass kept cracking in the windows and when I  
8        brought in an independent contractor, not the  
9        subcontractor that I had to deal with from the  
10       builder, he said this glass is always going to  
11       crack because your window isn't framed correctly.  
12       So I had to have all those windows in the kitchen  
13       taken out, new windows put in and they're fine.  
14       And I also had to have the windows in the bathroom  
15       taken out because they weren't framed correctly;  
16       it was freezing in the bathroom. And when they  
17       showed me the problem, is that because they didn't  
18       frame it correctly, there was about an  
19       inch-and-a-half to two inches open with no  
20       insulation and the cold air was just coming in.  
21       The windows in the dining room, same problem;  
22       water is coming in. I will have to eventually  
23       replace all 44 of my windows in my home and the  
24       builder said it's not his responsibility.

25                We have a box bay window on the front, it



1 goes two stories; all the wood rotted out. And  
2 when I called the builder, he said, oh, yes, we've  
3 been having problems with that. We don't use that  
4 kind of wood any more, we use different material,  
5 but it's not our responsibility. So I had to pay  
6 to have someone come and replace all that to  
7 maintain the integrity of the home.

8 What really has brought me here tonight in  
9 utter frustration is the basement of my house. We  
10 had water in the basement soon after we moved in  
11 and I did ask the builder to come. And they  
12 always are very nice; let me say that for the  
13 builder. They always are very pleasant when they  
14 tell me it's not their responsibility and they  
15 tell me that I have to deal with the  
16 subcontractor.

17 There was water coming in the basement so the  
18 gentleman came and he said, oh, yes, in deed, you  
19 have water in the basement and it's because you  
20 don't have landscaping. So we put landscaping in  
21 and we still had water in the basement. And they  
22 came back and they said, yes, well, you still have  
23 water in the basement; it's because your drain  
24 spouts are too close to the house. So I spent  
25 \$1,800 putting dry well in on one side to bring



1 the water out and the water kept coming in through  
2 the walls of my basement. It's coming in through  
3 the walls; they're saturated with water. I just  
4 spent \$27,000 to put in a French drain and three  
5 sump pumps and it does keep the water off my  
6 basement floor. I also had to pay an extra \$600  
7 to have dedicated electric lines down there to  
8 keep those sump pumps running if we lose  
9 electricity. They go to a battery operated --  
10 there's a whole structure down there now. The  
11 water still comes in through the basement walls  
12 but it goes into my French drain and goes out  
13 through the sump pumps. The people who came in to  
14 do that -- they did a nice job at my expense --  
15 they said you're in a clay bowl and that's why you  
16 have all this water in your basement. What I will  
17 eventually have to do is dig out around my  
18 foundation and have the basement sealed from the  
19 outside. That will be another very expensive job  
20 for me. By the time I finish, I will have rebuilt  
21 my entire home. And I don't feel that when you  
22 buy a new home you should have to go through this  
23 extraordinary expense.

24 Now, my husband and I took out a home equity  
25 loan in order to pay for all of this. Some people



1 cannot afford that, and I speak for them, as  
2 well. Because there must be some integrity on the  
3 part of these builders that when they have built  
4 something and there are obviously problems -- and  
5 I have many, many other problems with the house  
6 that I have been taking care of but they're more  
7 minor. You know the roof that constantly leaks  
8 because, oh, they forgot to put flashing in. And  
9 so now they're fixing that; every time we have  
10 another leak, they come and they put the  
11 flashing in.

12 We need very strong penalties. I know that  
13 Bill S-1825 speaks to this. I think the penalties  
14 need to be stronger. I think when these  
15 deficiencies occur and are substantiated, they  
16 need to be made public and in a venue where the  
17 public can readily access them. And it needs to  
18 be timely. Even when I'm listening to people here  
19 who are speaking, everything is taking so long.  
20 We need -- these are our homes. We need to feel  
21 safe in our homes and we need the integrity of our  
22 homes to be sound and to be strong.

23 So we appreciate, I know I greatly appreciate  
24 the laws that you have written and I am now  
25 looking to you for the justice.



1 Thank you.

2 SENATOR RICE: Do you remember who your  
3 builder was?

4 MRS. McMORROW: Do I remember my builder?  
5 Yes. My builder is Matzel and Munford. They were  
6 being bought out by Hovnanian and they were  
7 building my home.

8 SENATOR RICE: If you get a chance, would you  
9 send us some of the information, testimony you  
10 gave in writing to the Senator and to us.

11 MRS. McMORROW: I absolutely will, Senator.

12 SENATOR RICE: Be sure that you put who your  
13 builder was for me.

14 MRS. McMORROW: I absolutely will. Thank you  
15 very much. I appreciate that.

16 SENATOR KARCHER: I also want to remark on  
17 something that you brought up about the framing  
18 work. I think in the SCI report, if I recall  
19 correctly, there was something about the  
20 subcontractors for that type of Sheetrocking,  
21 framing work, there are not standards that they  
22 have to be held to as electrical inspections and  
23 electrical workers and plumbing. And that's  
24 something that I think, I don't know if it's  
25 included in the Bills as they're written, but that



1 needs to be further explored to make sure it is.  
2 Because it's just so easy to subcontract to  
3 unskilled workers who can get picked up that day  
4 and they're told go build that wall.

5 MRS. McMORROW: And my concern also is the  
6 one about the furnaces that in the attic. I just  
7 see that as a real safety issue. So, yes, I will  
8 give you all of this information.

9 Thank you so very much.

10 SENATOR KARCHER: Thank you so much.

11 Now we're headed east to Morganville and  
12 Felicia Stoler, who will be the poster person for  
13 this issue.

14 MS. STOLER: My name is Felicia Stoler.  
15 347 Wedgewood Road in Morganville.

16 In 1999 I bought a home in Morganville. From  
17 the moment that we moved in, we began having  
18 problems. We began a letter writing campaign, or  
19 I should say I began a letter writing campaign to  
20 the builder from the minute I moved into my  
21 house. It's been seven years and we have over two  
22 dozen construction deficiencies with our home,  
23 including structural problems, mold, code  
24 violations and grading problems.

25 I wanted to quantify some of what we live



1 through here in terms of what it actually costs  
2 people to go through the process after local towns  
3 and state officials have really not been able to  
4 be of assistance. We've spent over \$65,000 in the  
5 last two years in attorneys and experts to try to  
6 remedy the situation and it's still not done yet.

7 We built our home on good faith and we were  
8 given a lemon. We have two small children that  
9 live in a house that has exposed walls, ripped up  
10 flooring and siding that's been left removed. I  
11 gave Senator Karcher pictures of the way my house  
12 has been left for the last two years. It's kind  
13 of embarrassing to have other people over for play  
14 dates with my children. We've literally been held  
15 hostage in our house. We can't get out of it; we  
16 can't sell it; we can't do anything with it.  
17 Whatever costs the builder thought they would save  
18 really costs more at the end of the day. In our  
19 case the estimate to repair our home is much more  
20 than what it cost the builder to build it in the  
21 first place.

22 The builder can't understand why we're uneasy  
23 about living through the repair process. How do  
24 you relocate a family, a home and a home business  
25 temporarily for months on end with no plan of



1 repair, with no plan of when you're going to  
2 actually come back into your house. This has been  
3 an endurance event like no other. It's been  
4 dealing with an insurance company that has a  
5 policy of just saying no all the time. They want  
6 to see how many times you keep coming back and  
7 keep coming back; or the other analogy is when you  
8 teach a boy to play football and you just keep  
9 running into them, running into the pack. I've  
10 spent countless hours trying to get our home  
11 repaired over the years.

12 As our builder has advertised in their  
13 marketing materials, these are the homes that  
14 dreams are made of, but ours has been nothing but  
15 a nightmare. And what kills me is that on a  
16 personal level I do a lot in the community and on  
17 a state level to volunteer my time to give back to  
18 the community, and I feel that the legal system  
19 and the laws really haven't been there to help  
20 people like myself and my family. And yet for all  
21 the time that I've put in, other people would have  
22 just crawled in a hole and gone someplace else or  
23 left. And I'm glad to see that you're trying to  
24 do something to remedy the situation. I did have  
25 the State Commissioner of Investigation at my



1 house on numerous occasions and our family was  
2 part of what went into that investigation.

3 To chime into what other people said, in  
4 addition to the laws that you propose and  
5 explaining how it's going to work, I think you  
6 need to put some real time frames on what time it  
7 will take builders or whoever to remedy the  
8 situation because otherwise this lulling effect  
9 will just continue endlessly.

10 That's really it. I know that there are a  
11 lot of people here that want to speak. But I  
12 welcome all of you to come to my house and see it  
13 because it really is the poster child for bad  
14 construction.

15 SENATOR KARCHER: I showed the pictures to  
16 Senator Rice. He's perusing them now.

17 MS. STOLER: It's worse than those pictures.  
18 Those are from a year ago. It's gotten worse as  
19 the last winter went by.

20 SENATOR KARCHER: And you told me that the  
21 neighbor's house was built --

22 MS. STOLER: A little too close.

23 SENATOR KARCHER: How much closer than what  
24 it should have been?

25 MS. STOLER: Well, it's part of litigation.



1           It's sort of arbitrary of what was on the map and  
2           what actually happened. So I don't know if I can  
3           really discuss that.

4           But the problem is also grading. It's funny  
5           because I get these little daily alerts, media  
6           alerts about problems with my builder, or things  
7           that come up with my builder, and it's amazing to  
8           me how not just in the State of New Jersey, but  
9           elsewhere, but specifically in the State of New  
10          Jersey how many stories come up with people having  
11          problems with grading. Like that's such a vague  
12          area. And we did everything that the handyman for  
13          the development told us to do; wait; don't do  
14          landscaping; don't paint your house until the  
15          cracks stop. Well, I'll tell you what, the  
16          cracks, most of the Sheetrock was removed where  
17          the cracks were; I've got plenty of new ones now,  
18          too. It just doesn't stop.

19          SENATOR KARCHER: And I actually said to you,  
20          I have the reverse problem. My house was fine for  
21          ten years and then a development came in behind me  
22          and that's when I got the nail pops; that's when I  
23          got the cracks. What can I do? There's really  
24          nothing I can do because of nearby construction.  
25          And they also have their problems to their sites.



1           But it is so tempting in an area like this  
2           where builders come in, they look to this as ready  
3           money; get in, get out, let's do it, and left  
4           homeowners, a room full of homeowners here,  
5           obviously, with long-term consequences. It's not  
6           a health consequence; it's not a safety  
7           consequence; economically you really take it on  
8           the chin.

9           MS. STOLER: I mean, and the other thing,  
10          too, is that it's very expensive to go through this  
11          process. It's time consuming. I mean, I have a  
12          job and I have to take off time from my job to  
13          write letters, make phone calls, sit home, wait  
14          for people to show up or not show up.

15          Do you know how hard it is to find an  
16          attorney that can handle this or doesn't have a  
17          conflict of interest with your builder or to find  
18          the appropriate engineer that can do this or to  
19          find people to give estimates?

20          It's just a free for all. And it's also very  
21          difficult just to find the people that can help  
22          you.

23          AUDIENCE MEMBER: Who's the builder?

24          MS. STOLER: Hovnanian.

25          SENATOR KARCHER: Thank you.



1 Nat Zaccaria from Four Seasons at Wall.

2 MR. ZACCARIA: My name is Nat Zaccaria,  
3 Z-a-c-c-a-r-i-a.

4 Thank you.

5 I've been looking for respite to many of the  
6 problems of communities for quite a number of  
7 years. I have left the community where I lived  
8 eight years. I served on the Board of Trustees  
9 for five of those years. And what I hear tonight  
10 is obviously a repetition of some of the many  
11 things that we lived through. Rather than  
12 elaborate on the plethora of deficiencies, I  
13 worked with the SCI for a couple of years, as  
14 well, while I was on the Board; it outlines quite  
15 readily many of the deficiencies that we have all  
16 faced. And people who spoke here tonight have  
17 said and experienced the same things that we did  
18 at the Four Seasons at Wall. I have left there  
19 but when I heard of your meeting this evening, I  
20 thought I had to come to put my two cents worth in  
21 because I felt that the community has been  
22 neglected, not only by the developer, but by the  
23 bureaucrats that are supposed to be watching out  
24 for our interests.

25 The DCA, to name an agency, has been



1       deficient. There's a plethora of my  
2       correspondence over the years to them. The  
3       response I received, I didn't receive. I had  
4       written to the FBI, the State Attorney General,  
5       the county prosecutor. I made a statement in one  
6       of my many mailings, I asked if there was a wall  
7       around Wall Township that neither of those three  
8       agencies could penetrate; and I never got a  
9       response from any of those three agencies, even to  
10      that question.

11               Enforcement is something that should  
12      absolutely be part of the Bills. There should be  
13      penalties to those who should be working in the  
14      interest of the public and that are not. At Four  
15      Seasons 400 attics were constructed and never  
16      inspected, as was attested to during the SCI  
17      hearings.

18               I also testified under oath in private  
19      session with the SCI working with them for two  
20      years trying to get the problems solved. I  
21      thought that there should be a lemon law so that  
22      when a developer has the audacity to do what he's  
23      done over the many, many, many years to so many,  
24      many people, there should be a lesson to them that  
25      they can't produce a deficient product and have us



1 live with it. They should be made to live with it  
2 and pay us and buy back the deficient structures  
3 that they built.

4 There should be time limits, and this has  
5 already been mentioned and I mention it again.  
6 The developer should be given a time limit. I'll  
7 fix it, I'll fix it, I'll fix it; some of these  
8 people are waiting nine years. As a resident of  
9 Wall Township, Four Seasons, I was there eight  
10 years. The deficiencies that existed at the  
11 beginning that we uncovered, many of them are  
12 still there. Some of them are being worked on;  
13 some of them are not.

14 The entire industry for me has been one of an  
15 incestuous relationship in many aspects with many  
16 people being involved. And I'm hoping that  
17 perhaps with this legislation somewhere along the  
18 line they'll be enough teeth put into whatever you  
19 put in writing so that we should have some respite  
20 from the miseries. There's no reason in the world  
21 that we should be living in homes that are falling  
22 apart around us. My home wasn't falling apart, it  
23 was rather repaired and I was able to leave the  
24 home in reasonably repair. But there are still  
25 homes there that need to be done.



1           One of the things that hasn't been mentioned  
2           but I think I should mention it tonight; when you  
3           build a home and you are built on a slab and when  
4           you punch a hole through the slab so that the tub  
5           trap can't be placed where it should be and then  
6           that home is left so that your slab has an open  
7           hole to the ground below where you go reach into  
8           your tub area and you feel the dirt. Now, I wrote  
9           to the DCA any number of times and they thought it  
10          was perfectly okay. And when they wrote back and  
11          told me that it was perfectly okay, I asked them  
12          and I thanked them for not being involved in the  
13          ship building industry because I can see them  
14          sending out a ship with a hole in the hull and  
15          considering it good workmanship. They never  
16          really responded to that response -- to that  
17          letter that I wrote accusing them of that bad  
18          theory of allowing such a thing to exist; and it  
19          still exists. And I'm assuming that it's not only  
20          that community that was built that way; it's  
21          probably throughout the state. That is something  
22          else that should be, I think, looked into.

23                 Thank you very much for the time that you're  
24                 spending here tonight. And I hope that we put  
25                 some teeth in the laws. It's great to have the



1 law but what we need now is some teeth in the law.

2 Thank you very much.

3 SENATOR KARCHER: Thank you:

4 SENATOR RICE: Senator, through the chair,  
5 there are some provisions to address some of the  
6 concerns you have in terms of where conditions are  
7 such that they cannot be fixed, and they go beyond  
8 fixing, that the owner should be made whole by the  
9 builder or developer or someone. We are looking  
10 at those provisions, which would be what you call  
11 the lemon law type of provision. So I just want  
12 you to know that the Bill does incorporate some of  
13 that language. We just have to take another look  
14 at it.

15 SENATOR KARCHER: We're going to take a five  
16 minute break. Because we're using the services of  
17 a reporter, we need to just have a break for a  
18 short period of time to let her rest. We'll be  
19 back in five minutes.

20 (Brief recess was taken.)

21 SENATOR KARCHER: Dr. Steve Curtis.

22 DR. CURTIS: I'm not here for myself. I'm  
23 here because the particular builder in this area,  
24 Tinton Falls, is going to do the same thing to  
25 perhaps another 150 new construction projects and



1 I'm trying to prevent that.

2 Let me just start with what I think might  
3 make a difference. The townships and the  
4 counties, when they hire a contractor, they insist  
5 on a performance bond. Why in the world can't a  
6 homeowner have the same thing? 5% or 10% of the  
7 purchase price on a \$100,000 home would have  
8 \$10,000, not set in escrow, but through a bonding  
9 company. If a contractor's reputation becomes  
10 unbondable (sic), he can no longer do  
11 construction. That money is set aside; it's not  
12 run through the courts and cluttering the courts.  
13 It becomes an automatic thing where you can have  
14 binding arbitration, preferably with two-thirds of  
15 the panel being civilians instead of contractors,  
16 and just resolve things on the side. The money is  
17 there. The bonding companies would love the  
18 money. The contractors would all of a sudden be  
19 turned from a situation of reflex of greed to  
20 reflex of fear that they're going to lose that  
21 bonding privilege. Again, it wouldn't clutter the  
22 courts. You wouldn't have people having to hire  
23 individual engineers. It would pretty much come  
24 down to the punch list being respected. When the  
25 homeowner finally signs off on the punch list,



1       then the bond is released. And that can be a very  
2       civilized situation instead of a million different  
3       combinations. If there's money at stake,  
4       especially the builder's money, he's going to  
5       respect what your feelings are. That's not what  
6       happens today, that's why we're here, because he  
7       doesn't give a damn about your feelings.

8               In my own specific instance I provided a  
9       punch list for what was to be done. Made an  
10      appointment with the -- actually the manager of  
11      the entire -- Nutmeg Construction. And he came to  
12      the door, I had a broken foot at that time with my  
13      foot in a cast; he was on time. Opened the door,  
14      hi, glad to see you. He puts his finger in my  
15      chest, pushes me into the living room, and begins  
16      to tell me in 15 different dialects F you. I'm  
17      not doing a damn thing. You can't make me do  
18      anything. As a matter of fact, you have no idea  
19      who you're dealing with. And you see that area  
20      outside, the condominium area, that doesn't belong  
21      to you, that belongs to me; wait until you see  
22      what I do with that; and he walks out. And he  
23      kept his word. He refused to do one thing on the  
24      punch list. Absolutely nothing. A missing  
25      screen; he wouldn't even replace that. I did all



1 of the ordinary things, wrote all the letters and  
2 so on.

3 One of the basic problems that all the  
4 development has is with the heating system. And  
5 the way this was constructed, the basic problem is  
6 that the inspectors were out to lunch, a long  
7 lunch. And not only did they not see anything,  
8 even a civilian would notice that these things are  
9 incorrect.

10 For instance, what they did was they took an  
11 80,000 BTU furnace, which are plain Jane; you can  
12 get them cheap and dirty, the cheapest 80,000 BTU  
13 unit, and they jammed that same size unit with  
14 every house, no matter what the heat demand was.  
15 In my particular unit the actual heat demand was  
16 only 53,000 BTUs, which means it was oversized.  
17 That's not an advantage. As a matter of fact,  
18 engineering-wise, what it does is it creates a  
19 situation where the heat that's produced in the  
20 furnace cannot be delivered to the house, the  
21 furnace turns cherry hot and a limiter inside the  
22 furnace shuts down the furnace; so the furnace is  
23 on for five minutes; off for five minutes. And  
24 every time it fires up it's like a Bessemer  
25 furnace, boom.



1           Now, in my particular case, I have a  
2           transmission but no reverse. I just simply junked  
3           the furnace and brought in my own system, had  
4           ducts placed that the builder refused to put in;  
5           actually deleted from the original contract. At  
6           City Hall there actually were no structural plans  
7           for the entire complex. There were topo maps but  
8           the actual face, the side, what lumber, what  
9           specifications for electricity, plumbing, they  
10          were no where to be found. The specifications for  
11          the heating system were actually stick figures on  
12          a single piece of paper and then a little line  
13          through where they deleted that one extra run that  
14          was necessary to actually heat the house.

15          Now, my neighbors weren't as well healed.  
16          They have a kid and in those houses in the kitchen  
17          in the winter no matter what you set that  
18          thermostat on, you can set it on 80, 90, whatever  
19          your imagination feels happiest with, the kitchen  
20          only gets to be 60 degrees at the floor. The  
21          living room on the couch only reaches 64 degrees  
22          with this furnace running five minutes on, five  
23          minutes off, 24 hours a day. That's why my  
24          patience ended in two months and I got a real  
25          contractor in and settled it. And I found out



1 exactly why and what the defects were and  
2 explained them to as many people as I could. My  
3 problem is, again, the 200 or 300 people that are  
4 coming up who are going to be subjected to this  
5 all over again.

6 SENATOR KARCHER: Would you be able to  
7 document this, write this, put down for us to have  
8 as --

9 DR. CURTIS: I gave actually -- I'm the tip  
10 of the iceberg. The rest of the iceberg is with  
11 Rachel. It's well documented.

12 SENATOR KARCHER: Good. Thank you.

13 DR. CURTIS: The particular builder  
14 advertised that this development was the aspects  
15 of it to be noted were location, luxury and  
16 value. Now, the heating system speaks for  
17 itself. But the first summer there was a new  
18 surprise. I wasn't that familiar with that  
19 particular area and I found out that I actually  
20 live 2000 feet down wind of the municipal garbage  
21 dump.

22 SENATOR KARCHER: In Tinton Falls?

23 DR. CURTIS: In Tinton Falls. Shafto Road is  
24 where all these things are. And not only the  
25 municipal garbage dump but there's also a home and



1 toxic waste facility and, of course, the  
2 ammunition depot. These are things you would want  
3 new people to know. But the builder has you come  
4 in a certain entrance that you'll never, ever see  
5 and be aware of these things. In fact, in his  
6 Nutmeg advertisement he specifies in this new  
7 section that there are, what's his exact words,  
8 cluster of gorgeous trees in the background.  
9 Little did they let these homeowners know that 200  
10 feet beyond those trees begins the garbage dump  
11 100 foot height; pelicans circling.

12 Mostly what we're looking at is a bait and  
13 switch situation, false advertising and really  
14 deceptive sales practices. For instance, in my  
15 particular plan it said that there was going to be  
16 a refrigerator. And when I got in there and there  
17 was no refrigerator; he says, oh, it was a typo  
18 and it was a mistake; it should have been  
19 corrected. He's still using that same plan that  
20 says there is a refrigerator, because I went to  
21 the new section, and I don't know what he's  
22 telling all these people but I guess it's the same  
23 story he gave me. That was a \$1,000, which I  
24 thought would help pay for this end unit, which  
25 was a little bit fancier.



1           And he also had said that the appliances, the  
2           heat and air-conditioning were going to be high  
3           efficiency. The efficiency of the  
4           air-conditioning unit was a SEER of 10. High  
5           efficiency begins at SEER of 12. That's a 20%  
6           loss in efficiency from what he suggested starts  
7           at 12. The furnace, which was supposed to be high  
8           efficiency, was rated at 80%. High efficiency  
9           starts at 90, goes to 95 up to 98 I've had  
10          furnaces. I put in a 98% myself but other people  
11          couldn't afford to do that.

12           The neighbors next door have different  
13          problems because ducts were omitted purposefully.  
14          And in the master bedroom they actually had to  
15          supplement the heat with two space heaters. And  
16          in the summer they have to put in a window  
17          air-conditioner to survive in that same bedroom.  
18          The people across the street, like I said, in  
19          order to feed their kid, they've actually got to  
20          put two space heaters next to the height chair,  
21          otherwise they live upstairs where the heat goes.

22           It's all purposeful and it's all meant to  
23          save money. And it did save him a lot of money  
24          but I don't know, the nerve endings of the  
25          people.



1           The first time I knew I had an inspection  
2           problem was when I looked at the electrical panel  
3           where I've got this okay final inspection on it.  
4           Two feet to the right of that panel was an open  
5           electric box; six feet to the left of it was an  
6           open electric box; and it made final inspection.  
7           So I knew at that point who the building  
8           inspectors were working for.

9           Now, as far as the warranty that was  
10          advertised as an advantage but, of course, the  
11          warranty itself was never provided until the  
12          actual closing. And you really don't read the  
13          fine print on a warranty, of course, until you  
14          start to have problems. And as somebody else  
15          alluded too, it was that if you elect to exercise  
16          the warranty, it relieves the builder of all  
17          liability. And he just said, would you please  
18          just use the warranty, use the warranty. No,  
19          sir. Contract law gives me six years to come  
20          after you and I'm going to exercise that period  
21          and I'm not going to use the warranty.

22          The only other thing that I can think of,  
23          which may be an indecent proposal to the  
24          townships, but the townships are the ones that are  
25          letting and leaving these inspectors to do what



1           they do. What if the people who are in this  
2           situation like Mr. Ma, if those situations were  
3           documented and the situation was such that it was  
4           caused by a failure of the inspectors of the  
5           township, somebody like Mr. Ma should only be  
6           paying 50% on his taxes because he doesn't have a  
7           home. And that money that he didn't pay in taxes  
8           he can start to use to actually start doing the  
9           repairs because the builder is not going to do  
10          it. It would give some relief.

11                    SENATOR KARCHER: Did you put your  
12          recommendations, as well, in what you gave Rachel,  
13          my aide?

14                    DR. CURTIS: No, no, no. These things  
15          occurred to me as I was listening.

16                    SENATOR KARCHER: If you could, I really  
17          would appreciate it if you could also some way  
18          have your recommendations written down, as well.  
19          That would be really helpful, I think, moving  
20          forward for us. Because the issue of bait and  
21          switch, that's something that I don't know that  
22          that's addressed in the Bills we're addressing  
23          this evening. That's certainly worth looking  
24          into. And, as well, what we can do when there is  
25          a situation like there is in Manalapan and they're



1 going to connect the dots that this lacks  
2 regulation on the part of the municipality, look  
3 at what those alternatives are for the community,  
4 where the monies would come from. They certainly  
5 are worthwhile ideas that you put forward and if  
6 you can have it in a document for us, I think that  
7 would be helpful.

8 DR. CURTIS: All right. I'll talk to  
9 Rachel. But the municipality, losing 50% of that  
10 would certainly have their eyes focused.

11 SENATOR KARCHER: Compel them to make sure  
12 that their inspectors are --

13 DR. CURTIS: That's a carrot and a switch, I  
14 guess.

15 Give me a second. Ever since the plane crash  
16 my head doesn't work the way it should. I'm not  
17 fooling.

18 The final issue, again, I'm here for the  
19 houses that are going to be built. However, that  
20 same region along Shafto Road is also scheduled  
21 for another builder to build another 273 homes.  
22 That particular development, the big brouhaha is  
23 that they're too close to a tributary to the Shark  
24 River. That they're worried about that.

25 What I'm worried about is the 273 families



1           that are right next to a garbage dump, a toxic  
2           waste site and an ammunition site and nobody is  
3           telling them. They just talk about the luxurious  
4           trees.

5           Thank you.

6           SENATOR KARCHER: We see that situation in my  
7           town of Marlboro. When I was on the town council  
8           we addressed the issue of redistricting the  
9           schools because it was a regional high school  
10          district. And the things that came forward that  
11          people reported that they were not told about  
12          their homes, everyone says you'll be going to the  
13          Marlboro school system, your child will be in the  
14          Marlboro school system; everyone assumed my child  
15          will be going to the Marlboro school system right  
16          through high school. They didn't -- people --  
17          this is a time in their lives when maybe they're  
18          just overwhelmed by the whole process of getting  
19          into their home, some questions might not be on  
20          the tip of their tongue to ask. What is behind  
21          those trees; what school will my child go to 15  
22          years down the road.

23          There needs to be absolute full disclosure on  
24          the part of the builders. And I've spoken to real  
25          estate -- the Board of Realtors about this and



1 making sure that within the multiple listings that  
2 we can have other -- more fuller disclosure of  
3 what are the pros and cons. As you pointed out,  
4 they entice you with some fancy words and things  
5 that would make you want to go and plop down your  
6 money and take your chances really is what you're  
7 doing. And we just can't have that continue. And  
8 people are getting pulled into a community that  
9 certainly has other hazards.

10 DR. CURTIS: The unfortunate thing is you're  
11 talking to a salesman. The builder hires a  
12 salesman to create the voice.

13 In our particular development the salesman  
14 was the Realtor who was actually on the planning  
15 board, zoning board, environmental board and  
16 appeals board, I think that's all there is, and at  
17 the same time was working for a developer. And  
18 he's in the newspapers. But that's a salesman  
19 that is part of the Nutmeg development.

20 Thank you.

21 SENATOR KARCHER: Thank you.

22 We're going to switch gears a little bit  
23 now. We're going to hear from George Dougherty  
24 from Katz & Dougherty attorneys in support of the  
25 Bill.



1           MR. DOUGHERTY: Thank you Senator Karcher and  
2           Senator Rice.

3           Quickly may I just say that I lived in Newark  
4           for six years while I was at Rutgers and for two  
5           years after that when I started with the State  
6           Attorney General's office. And at Rutgers, Class  
7           of '68, I met a young law student by the name of  
8           Alan Karcher. And I followed his career actually  
9           when I was a city attorney in Trenton. We had him  
10          come to our City Hall where he led a wonderful  
11          discussion on what was wrong with our local tax  
12          situations. He made amazingly cultured remarks  
13          and we failed our campaign sputter (sic). But he was  
14          there for us.

15          SENATOR KARCHER: I heard that every night.

16          MR. DOUGHERTY: I'm here I guess as a  
17          funnel. I'm not going to name my clients or my  
18          adversaries. But for many, many years starting in  
19          1988 when I took a case called Generi versus  
20          Weichert through the entire court system, up to  
21          the Supreme Court my phone has been ringing off  
22          the hook with calls for legal assistance; people  
23          who read about this case which involved a very  
24          small developer who had no business being a  
25          developer who had the backing of a major real



1 estate company who had no business backing him.  
2 And it was my first foray into residential  
3 construction.

4 One of the first things we did in that case,  
5 by the way, was to have our clients take a tax  
6 appeal. And in 1989, one year after the  
7 litigation was filed, these homes which were  
8 selling in 1986 for over \$400,000 in Lawrence  
9 Township, were reduced to \$100 valuation, four of  
10 them were. I want to just recommend that there  
11 are laws available for the distressed homeowner  
12 that can be used. We are not totally without our  
13 laws and we're not without the support of our  
14 court system.

15 I have taken every opportunity to applaud our  
16 judicial system for standing up for the  
17 homeowner. The problem is very few people can  
18 afford to get into the judicial system and are  
19 forced to use the warranty program, which I've  
20 likened to a safety net. But it's a safety net  
21 that's one inch off of a concrete floor and if you  
22 fall into it, you're not getting a lot of safety.  
23 You get smashed.

24 The system has been broken for many, many  
25 years. I applaud the SCI for doing a tremendous



1        job, sorting through and putting together a great  
2        deal of individual anecdotal stories and coming up  
3        with I think an absolute bullseye comment and  
4        request for legislation. And I have to commend  
5        Senator Rice and the Assemblywoman who is there  
6        for doing the takeoff on this and putting this  
7        into effect.

8                If I didn't change -- if I didn't have one  
9        suggestion today, I would still say you have here  
10       in the package of Bills that I've read a wonderful  
11       start on a new day for the homeowner. The Bill of  
12       Rights; the emphasis on enforcement; the efforts  
13       to raise penalties; and the effort to improve upon  
14       what I think has been a very, very poorly designed  
15       system for the arbitration for the warranty  
16       program.

17               And I'm rushing because I sat in the audience  
18       listening to some very, very interesting stories  
19       and I'm sure there are more of them behind me. I  
20       want to funnel to you what's been basically about  
21       30 years of litigation experience. I'm not going  
22       to name clients or companies. I probably have had  
23       litigation with every major company in New  
24       Jersey. What has come out of this, in my mind,  
25       are several points which are not really addressed;



1           and how could they be. I'm not sure that these  
2           were ever brought through clearly enough through  
3           the SCI proceedings. So hot-bun issues, which  
4           I'll just tip-off tonight, and I'll be more than  
5           happy to produce this in the form of a more  
6           scholarly and more comprehensive report that I can  
7           give to you and Senator Rice and anybody else who  
8           wants it.

9           Just to begin with, the hottest bun issue,  
10          the one thing, if you can do only one thing to  
11          make it better for all of the homeowners would be  
12          to take ten words out of an administrative code.  
13          And those ten words are: This regulation shall not  
14          apply to the construction of new homes. Ten  
15          words. And these words were brought up during the  
16          SCI hearings to then Peter Harvey who was the  
17          Attorney General. And he said, I believe on the  
18          record of those hearings, that he would make sure  
19          that those words were taken out.

20                 Where are these words?

21                 These words are in the regulations which  
22                 codify the obligation of home remodelers. Home  
23                 remodelers, when I have to sue them, literally  
24                 come to court and wind up in tears. I've seen  
25                 grown men cry when the judge in a settlement



1 conference has to tell a defendant who is a home  
2 remodeler, I'm sorry, but the Consumer Fraud Act  
3 is very unforgiving. Now, you took that woman's  
4 money and she ordered a certain brand name heating  
5 unit and you substituted it without telling her  
6 and that means that you're guilty of consumer  
7 fraud and there's no defense to it. That's a  
8 simple offense. Therefore, you're responsible for  
9 her attorney's fees; you're responsible for  
10 replacing that unit and/or pay for her to replace  
11 it, and treble damages; three times the cost.

12 When I have to sue a new home buyer they  
13 point out that they are not going to see me in  
14 court tomorrow or the next day and cry, they're  
15 going to hold me up. And they're going to take my  
16 client and me through eight, nine, ten years of  
17 litigation because they can afford to do it. No  
18 tears. No fear. Because the ten little words in  
19 the administrative code which captures the home  
20 remodeler are: This shall not apply to the  
21 construction of new homes. Take those words out  
22 of the administrative code, and it's the Attorney  
23 General who has the power to do that. The new  
24 Attorney General can do that before the end of  
25 next week. He can do it. Take those words out



1 and the builders will heel. The builders will  
2 come to heel. Because when they do it, right now  
3 they can take you into the swampland of litigation  
4 or the arbitration programs and they will win  
5 there. Because very few people can afford  
6 attorneys and very few attorneys are willing to go  
7 that distance, especially on a contingent basis.

8 The other things that I noticed in the  
9 proposed legislation, which again is excellent,  
10 one of the major battlegrounds that we have as  
11 lawyers dealing with construction companies has to  
12 do with when a code violation involves a  
13 structural defect or structural unsoundness.

14 Homes do not fall apart in a day or two.  
15 They don't fall apart in a year or two. Sometimes  
16 it takes homes ten or twelve years to show the  
17 effects of bad construction. And we should not be  
18 forcing homeowners to have to leave court or leave  
19 the arbitration process simply because their homes  
20 are still standing. And an engineer would have to  
21 swear that, yes, they're still structurally  
22 sound.

23 Our engineers are experts. When they look at  
24 a problem and see a problem in the making, they  
25 can see a structural design defect or they can see



1 a bad use of materials or they see bad  
2 workmanship. They can say this will not last as  
3 long as the house is expected to last. This will  
4 not last. This house will prematurely fail. It  
5 will not fall down. It will just become shaky and  
6 the windows will be tight. None of these things  
7 are considered structural failures. And,  
8 therefore, I propose that we reshape our laws,  
9 both the statutory law and the building code, but  
10 most importantly the arbitration because most  
11 people will go there, and get rid of the concept  
12 of a defect because a defect means it's defective  
13 now.

14 I would talk about a condition which to a  
15 reasonable degree of engineering certainty will  
16 become a defect in the immediate future or within  
17 the useful life of the house. You don't have to  
18 wait in all cases for the house to fall down  
19 before you know it's going to fall down in the  
20 future. And if the builder plays this waiting  
21 game, especially with a ten year statute of  
22 re-post, it's going to still be standing after ten  
23 years, I'm free. He's right.

24 Change the law so that the action ability  
25 starts when a reasonable engineer proves to a



1 hearing officer or to a judge or a jury that the  
2 conditions present will to a reasonable degree of  
3 engineering certainty produce that failure at some  
4 time in the future before the useful life of the  
5 house is up.

6 Another item which could level the playing  
7 field between the consumers and the builders, and  
8 it's within your power as legislators to do this,  
9 amend the Consumer Fraud Act so that a homeowner  
10 is entitled to recover damages and have them  
11 enhance, maybe not treble, maybe 50% or 75% or a  
12 100%, not 300%. I think in many cases 300%  
13 damages does a disservice to both the consumer and  
14 the construction company because it's so much and  
15 people look at a \$500,000 house and they say, wow,  
16 this consumer wants 1.5 million dollars at the end  
17 of this case. It makes the consumer look  
18 avaricious; makes the lawyer look avaricious and  
19 it prevents settlements.

20 I would recommend, frankly, a study be done  
21 to see how many attorneys agree with that and see  
22 if we can soften that so that the enhanced damages  
23 available under Consumer Fraud remain more  
24 moderate and more obtainable in a reasonable  
25 case.



1           But also, why should we not include the  
2           quality of life damages that the jury has to fix  
3           every day for personal injury. Somebody breaks an  
4           arm; somebody has a traumatic accident; juries are  
5           asked to fix the reasonable value of the impact on  
6           the plaintiff's quality of life. When a jury does  
7           that, why shouldn't that damage be added to the  
8           repair damages so that the builder is asked to  
9           respond to that plus the enhanced portion of  
10          that.

11          As you may know, our law is very clear as  
12          interpreted by the courts. You're only entitled  
13          to your treble damages on the portion of the  
14          repair that you can prove to be the product of the  
15          consumer fraud. And I think -- I've seen this so  
16          often where the standoff in court is, well, you  
17          may have a terrible house here but only part of it  
18          is consumer fraud; the other part of it is just  
19          bad workmanship. Well, yes, but it's \$150,000 in  
20          repairs; yeah, but only \$25 of it is really  
21          consumer fraud. And we battle over these things  
22          in court, which is why these cases take so long.  
23          I think legislation can clean that up and also add  
24          what we call quality of life or non-economic  
25          damages.



1           Just a quick couple other points.

2           The gentleman talked about his heating  
3           system. I have been recently engaged by several  
4           communities, different parts of the state; we hint  
5           to you that you should have one of these meetings  
6           up in Somerset County where Energy Star rated  
7           homes were built. There is a major, major problem  
8           with that.

9           I learned, because I called directly down to  
10          DCA, and I learned that there is no policeman on  
11          the beat for Energy Star. The local building  
12          inspector, construction code official, is not  
13          allowed to inspect for Energy Star. And only 15%  
14          of the homes built need be inspected; the rest are  
15          trusted. And I'm running into problems -- being  
16          retained to resolve problems in major communities  
17          where that system is in place.

18          Finally, please somebody hold a hearing on  
19          this one question. In New Jersey, are we  
20          requiring our builders who build along the coastal  
21          communities, including Monmouth, are we requiring  
22          them to build homes designed to resist wind  
23          loads?

24          I've had a running battle with the director  
25          of construction for the state DCA over that



1 issue. There has been correspondence back and  
2 forth; I've kept it. I'll supply it to you.  
3 There's an engineer sitting in this room who  
4 helped me understand this labyrinthic code. And  
5 his opinion was that, yes, our laws require  
6 builders to build so that a house can withstand  
7 hurricane winds but not our director of  
8 construction for the DCA. He said, no, he thought  
9 I was crazy to say so. And I said to him, well,  
10 then you're saying that homeowners buying homes  
11 built along the coastline have no code protection  
12 against their house withstanding a hurricane. And  
13 that was the end of discussion.

14 And that's the end of my testimony. I'll be  
15 available to you at any time in the near future  
16 for any follow-up documentation, anecdotes, war  
17 stories.

18 SENATOR KARCHER: Thank you. Actually,  
19 that's one of the issues that the coastal  
20 institute is grappling with right now, about  
21 building codes along coastal areas.

22 MR. DOUGHERTY: I think it's more than just a  
23 good idea. I think it's the law already.

24 SENATOR KARCHER: Thank you.

25 DR. CURTIS: I have a lethal omission from my



1 testimony.

2 SENATOR KARCHER: We have lots of folks we  
3 still need to get through so I'm going to just  
4 continue with people who submitted requests.

5 DR. CURTIS: Twenty seconds.

6 SENATOR KARCHER: Twenty seconds; I'm going  
7 to start my clock right now.

8 DR. CURTIS: It's a very simple mechanical  
9 principle. If the heating system is inadvertently  
10 or by design larger than the heat demand that the  
11 house has, it creates extra condensation in the  
12 chimney. The chimney rusts out in as little as  
13 ten years. You get pin holes, carbon monoxide,  
14 carbon dioxide, water, and you eventually will  
15 have a roof fire in this kind of situation where  
16 you get oversized furnaces. So it's not a  
17 favorite. It's like a truck with car wheels; it's  
18 going to crash.

19 SENATOR KARCHER: Thank you.

20 Damon Kress.

21 MR. KRESS: Good evening, Senators. My name  
22 is Damon Kress. I'm an attorney with McGovern  
23 Legal Services. We represent about 40  
24 associations throughout the State of New Jersey;  
25 some in Pennsylvania. I just came here tonight to



1           briefly discuss one situation at Glenbrook  
2           Condominium Association, which is in my experience  
3           one of the most egregious violations by a  
4           developer of building standards and professional  
5           practice.

6                     Glenbrook Condominium Association is an  
7           eighty-unit development with homes for low and  
8           moderate income units of primarily elderly senior  
9           citizens. It's 55 and older but it's not a 55 and  
10          older active adult community. There's no  
11          clubhouse. It's simply low and moderate income  
12          housing for elderly individuals. This community  
13          was developed by a developer called Glenbrook  
14          Estates, Inc., which was a developer created  
15          solely for the purposes of developing this  
16          development.

17                    Now, after the homeowners took control of the  
18          board, they went out, retained an engineer to  
19          evaluate the common elements. Looked for  
20          construction defects and prepare a report so they  
21          can convey a report to the developer and ask for a  
22          redress of the deficiencies they identified.  
23          While the homeowners' engineer was preparing that  
24          report, the developer withdrew all the assets from  
25          the corporation, dissolved the corporation, and



1           then either shortly before or soon after the  
2           association filed its lawsuit against the  
3           developer, shredded the majority of documents the  
4           developer had regarding the conduct of that  
5           developer during its construction of this  
6           development.

7           Now, I believe these Bills all provide very  
8           useful tools for homeowners in the future but  
9           unfortunately there are homeowners now that have  
10          problems and need assistance from the State in  
11          redressing their grievances against developers  
12          whom they've already purchased homes from and will  
13          not enjoy the benefits of this legislation should  
14          it be enacted into law.

15          And that's all I came here this evening to  
16          discuss.

17          SENATOR RICE: Once again, leave that -- get  
18          that information to us in terms of your  
19          development, the developer. As legislators we  
20          have to work hand-in-hand with the  
21          administration. I'm going to have to, to some  
22          reasonable degree, use my gentle persuasions to  
23          see if, in fact, I can get the new attorney  
24          general to start pursuing some of these from a  
25          different perspective in SCI with the different



1 authorities they have. Okay.

2 SENATOR KARCHER: Virginia Orbe, Association  
3 of Concerned Homeowners.

4 MS. ORBE: Senators, my name is Virginia Orbe  
5 from the Four Seasons at Wall Township. I'm the  
6 Treasurer of the Association of Concerned  
7 Homeowners there. The organization represents 278  
8 of the 400 homeowners.

9 The concerns I have are the community I live  
10 in is an active adult community, 55 and older.  
11 These communities are governed by POS, Public  
12 Offering Statement, which is written by the  
13 builder and generally protects the interests of  
14 the builder. The community is overseen by a Board  
15 of Trustees and when we started to have  
16 construction problems in our development with  
17 electrical panels, trusses, different things, the  
18 elected Board of Trustees tried to intervene and  
19 the builder wrote back that they could only handle  
20 common area issues as provided by the Public  
21 Offering Statement; they couldn't intervene or get  
22 involved in any individual homeowner issues; thus  
23 our organization was started to help homeowners  
24 organize and get the builder to fix things.

25 This year one of the attorneys with the



1 developer who developed our community sent a  
2 letter to the Department of Community Affairs that  
3 they should not answer any questions or deal with  
4 us in any way because the builder did not want to  
5 recognize an ad hoc group.

6 SENATOR RICE: Who said that, I'm sorry?

7 MS. ORBE: The attorney for the developer in  
8 a written letter to Department of Community  
9 Affairs.

10 I don't think developers should be allowed to  
11 prevent homeowners from organizing to get redress  
12 on the issues that are before them.

13 The Township has been somewhat helpful.  
14 There was an issue with snow in the attic which  
15 affected over a hundred homeowners and the  
16 builder's initial response to that problem was it  
17 was an unusual event of nature and people should  
18 put down a tarp in their attic if they were afraid  
19 the snow would melt and do damage to their homes.  
20 The town eventually issued code violations for  
21 thirty houses. We've been before the Construction  
22 Board of Appeals for about a year-and-a-half at  
23 this point. Supposedly I thought there was only  
24 supposed to be one postponement in those things  
25 but there have been several, all at the builder's



1 attorney's bequest. And in June when we met last,  
2 the developer was to have to the Township a plan  
3 for the remedial action in the homes that was  
4 devised by his engineer and a time table of when  
5 the repairs were to be completed, hopefully before  
6 this winter, and nothing has happened yet. So  
7 that Board of Appeals process I don't think  
8 works.

9 And I would ask -- I'm very grateful for what  
10 you're doing here and hope that you will be able  
11 to do more to correct the situations that exist.

12 SENATOR KARCHER: Thank you.

13 Actually, I think -- I'm not familiar with --  
14 that familiar with it, but do you have the  
15 legislation that addresses community organizations  
16 by Senator Doria?

17 SENATOR RICE: We have some Bills in along  
18 with Senator Turner and there are some other Bills  
19 by Senator Doria.

20 There are people who allege that we aren't  
21 seeing these Bills and I explain to the people in  
22 Gloucester and Whiting we're going to have a Bill  
23 because unit owner's rights are being violated to  
24 some degree. Not by all board members and owners  
25 throughout the state but there is enough of them.



1 And so because we can't seem to gander enough  
2 votes to pass legislation that makes sense, and  
3 because I'm smart enough to know that the Doria  
4 Bill is not the correct Bill but he's a good  
5 Senator, and the Turner Bill is not where it  
6 should be, then there are some third issues that  
7 we can't seem to reconcile. I'm kind of doing a  
8 semi, not really a redraft, but trying to do some  
9 merging and taking out some hardships.

10 But in terms of the issue raised about the  
11 units being on appeal, are they on appeal in the  
12 courts or in arbitration?

13 MS. ORBE: Construction Board of Appeals in  
14 Freehold.

15 SENATOR RICE: Then what we need to do is  
16 maybe have information from you as to your  
17 location, if you can get it to us. We'll get the  
18 State to try to intervene, if they legally can, to  
19 try to get the Construction Board of Appeals and  
20 those that work for them to get off their little  
21 fannies right now and given the problems we have,  
22 or see if there's a way the State can get involved  
23 with the appeal process. I'll have to check the  
24 status in the laws, pass it by the Attorney  
25 General or whoever, but there may be a legal way



1 to help you expedite those appeals.

2 MS. ORBE: Thank you.

3 SENATOR KARCHER: Paul Leodori. Community  
4 Associations Institute of New Jersey.

5 MR. LEODORI: Good evening Senator Karcher.  
6 Good evening Senator Rice. My name is Paul  
7 Leodori. I'm an attorney, a former Assistant  
8 Prosecutor, a former Deputy Attorney General.  
9 I've represented community associations throughout  
10 New Jersey. Tonight I'm here on behalf of CAI of  
11 New Jersey; that's the Community Associations  
12 Institute.

13 Just by way of background, CAI is an arm of  
14 the Community Associations Institute which is a  
15 national not-profit educational and informational  
16 organization which serves America's condominium,  
17 corporative and homeowners associations. The New  
18 Jersey's chapter of CAI is the second largest  
19 chapter in the United States. We have over 2,000  
20 members and many of our members serve on boards  
21 throughout New Jersey.

22 We thank you for this opportunity to testify  
23 in support of S-2046. CAI and its membership  
24 strongly endorses this measure. This progressive  
25 Bill will enhance the existing protections



1       pursuant to the Planned Real Estate Development  
2       Full Disclosure Act, commonly known as PRED.  
3       Indeed, the issue of transition is a significant  
4       concern to community associations. And in an  
5       effort to better address and protect the rights of  
6       purchasers and owners within these developments,  
7       we respectfully suggest that you consider some  
8       modifications to S-2046 that would elaborate upon  
9       the specific duties and responsibilities that a  
10      developer should undertake prior to and at the  
11      time of transition.

12             As we heard earlier this evening, there are a  
13      lot of horror stories. We believe that the  
14      experience of the CAI New Jersey members has been  
15      that certain initial unit owner controlled boards  
16      inherit accounting methodologies from a developer  
17      which leave a community underfunded from its  
18      inception. Also, there are many instances where  
19      the financial burden of correcting a developer's  
20      defective construction becomes a hidden and  
21      devastating burden upon all unit owners.

22             From the perspective of CAI New Jersey we  
23      believe that S-2046 provides a unique opportunity  
24      to comprehensively address the engineering,  
25      accounting, and legal ramifications of transition



1 and we would make the following considerations  
2 with respect to 2046.

3 We would ask, number one, that the provisions  
4 establishing a methodology for the developer to  
5 contribute to the funding of an engineering survey  
6 of all common elements at the time of transition.  
7 As we heard over and over this evening, people  
8 have been confronted with the costs of having to  
9 do engineering studies. Usually you have a board  
10 that has not had the opportunity or the  
11 sophistication to deal with these issues. But if  
12 there is a fund available, it will be very, very  
13 consumer oriented and will meet their expectations.

14 Number two, we would ask that provisions  
15 requiring the developer to conduct either an audit  
16 or an agreed upon procedure of the financial  
17 records at the time of transition consistent with  
18 generally accepted accounting principles. This is  
19 actually a very subtle way that the membership of  
20 CAI has seen people of community associations  
21 caught up in a horrible, horrible situation, a  
22 very sophisticated accounting sleight of hand;  
23 which, again, we would ask that 2046 consider.

24 Three, we would ask that there be provisions  
25 establishing a methodology for the developer to



1 contribute to the funding of cost-to-cure reports  
2 for corrections that may need to be made by a  
3 developer after transition.

4           There's actually two stages that we find in  
5 transition litigation that people suffer from.  
6 The first is finding out what really is wrong with  
7 our community. The second is how much is it going  
8 to cost to fix us. It's an awful obligation to  
9 throw on people that are not sophisticated. It's  
10 their first few months on the board; they're just  
11 getting settled into a community; and they need  
12 the resources to address these issues. And we  
13 believe that if we can attack that proactively and  
14 attack it comprehensively, this Bill will give  
15 everybody in this audience the opportunity to  
16 address these developer issues and have them have  
17 the upper hand; have them get the benefit of a  
18 bargain; have them have the expectations of buying  
19 a new home.

20           Fourth, we would ask that the provisions  
21 establishing a methodology consistent with general  
22 accepted accounting principles requiring the  
23 developer to establish an equitably funded share  
24 of adequate capital replacement reserves and  
25 operating expenses.



1           Again, these accounting sleight of hands  
2           leave communities holding the bag when the  
3           developers have left the state. It's a terrible  
4           situation. Again, if we can come up with  
5           generally accepted accounting principles for  
6           having them to be accountable from day one, it  
7           will be a wonderful resource for these people.

8           Fifth, we would ask that the provisions  
9           requiring the developer and the developer  
10          controlled board to establish full occupancy  
11          budgets to more accurately reflect operating costs  
12          and expenses of the association. Again, more  
13          accounting sleight of hand. If we can address  
14          them proactively, it would put no change to the  
15          good developers, but it will sort out the bad  
16          developers immediately.

17          And quite frankly, we want good developers in  
18          the State and we want the good developers to be on  
19          an equal plane. We don't want our good developers  
20          having to compete with bad developers. And that's  
21          very important. We think if legislation could  
22          incorporate some of those concerns, we will keep  
23          the good developers here and we'll get rid of the  
24          bad developers.

25          Six, we would like to see provisions



1        establishing items a developer must reserve for  
2        prior to transition and the applicable funding  
3        periods. For example, useful lives of roofs and  
4        sidings and things like that. Again, your good  
5        developers are doing the right thing but if  
6        they're competing with a bad developer, the  
7        uneducated consumer is not going to know what the  
8        differences are until it's too late. And to me,  
9        that's the essence of consumer fraud and that's  
10       the essence of what SCI is all about and that's  
11       the essence of what this legislation is trying to  
12       get to. So, again, we would ask that that be a  
13       provision included.

14                Last but not least, we'd ask that there be  
15       provisions establishing parameters acceptable  
16       under general accepted accounting principles  
17       concerning the treatment of deferred maintenance  
18       funds and requiring a methodology for the  
19       developer to contribute to the funding of deferred  
20       maintenance funds. And what we found historically  
21       is, again, the good developers are leaving a  
22       financially sound community behind when they  
23       leave. The bad developers are not.

24                So, again, I thank you for your attention; I  
25       know it's very late. But on behalf of CAI New



1 Jersey, we offer the opportunity to work and  
2 provide as much input as our membership can to  
3 you. And we welcome the opportunity to work with  
4 you and support you ever so strongly in this  
5 wonderful legislation. And I think its time has  
6 come. And on a personal level, having litigated  
7 and seen people like this over the years, I  
8 personally applaud you, as well.

9 Thank you all very much.

10 SENATOR KARCHER: In the interest of time, if  
11 it's okay with the individuals who are going to  
12 give testimony, I would like to bring up those  
13 folks who live in Wall, Daniel Fox and Johnny  
14 Mitrione together.

15 Is that okay?

16 DR. FOX: John just had to leave.

17 SENATOR KARCHER: He just had to leave;  
18 okay. So Dr. Fox.

19 We also have Eric Brophy who represents the  
20 president of the Allaire Country Club Estates in  
21 Wall.

22 MR. BROPHY: Do you want me up?

23 SENATOR KARCHER: Maybe not. It's up to  
24 you.

25 You don't live together, do you?



1           MR. BROPHY: Not officially. Not that I know  
2 of.

3           SENATOR KARCHER: Since you didn't mark  
4 whether you're in favor or opposed, I didn't want  
5 to --

6           MR. BROPHY: We're certainly in favor of it.

7           SENATOR KARCHER: Terrific. Okay.

8           DR. FOX: My name is Dan Fox, F-o-x. I very  
9 much applaud everything that's being -- trying to  
10 be accomplished here and what has been  
11 accomplished. The stories I hear are very similar  
12 to my own but at this point I would like to just  
13 add a few points.

14           Starting with point number one, currently if  
15 the builder states that he's going to do things  
16 for you and he puts it in writing in the contract  
17 and you have this contract and you believe that  
18 this certainly is what's going to happen with your  
19 house and the things that he puts in the contract  
20 do not come to be and actually are not done, what  
21 recourse now and in the future does the homeowner  
22 have?

23           So this is actually a two-part; it's a  
24 question.

25           Is there -- besides taking the builder to



1 court and litigation, is there any other  
2 recourse?

3 And if, in fact, this was done with another  
4 situation outside of building a new home, if you  
5 have a contract and someone blatantly lies saying  
6 that they were going to give you, for example, an  
7 electrical system that's going to supply a 5,000  
8 square foot home and your electrical system  
9 supplied a 2,000 square foot home, or having  
10 stated it will be natural stucco and it's totally  
11 not what they say it is; is there any recourse?

12 That's a question to the panel.

13 SENATOR RICE: We're trying to avoid  
14 litigation. We're trying to put some things in  
15 places that number one, it does not occur in the  
16 future. We have present situations and future  
17 situations. Moving to future legislation, we're  
18 trying to say, look, there's going to be some  
19 reserves, some escrows, some set asides, some  
20 bonding things done for certain kinds of defects  
21 and damages, so we don't have to be chasing  
22 people; we don't have to wait; we don't have to go  
23 there.

24 In terms of the court system, we're trying to  
25 bring it back into arbitration or back to the



1 state side first because that's really where a lot  
2 of this stuff should have been resolved if you're  
3 talking code violations because we do have, you  
4 know, the Uniform Code Acts, which changed its  
5 name nationally.

6 Bob, you may respond to that; they're looking  
7 for recourse.

8 MR. ROTHBERG: Basically they lied to you and  
9 it's in writing. So that if you were getting a  
10 house made of wood and they make it of tinfoil and  
11 it's in writing, normally you have a contract and  
12 this is not fulfilled and you find out after you  
13 moved in; currently is there a recourse besides  
14 litigation, which I would imagine --

15 SENATOR RICE: Hang on a moment. I didn't  
16 realize there was a signed -- the question was a  
17 signed and binding contract. Recourse may have to  
18 very well be because of the quote/unquote, and I  
19 didn't write these laws now, "buyer beware". And  
20 in most cases the contracts, the contract is  
21 reviewed by an attorney representing one side and  
22 an attorney on the other side. Sometimes people  
23 make the fatal mistake by getting an attorney  
24 willing to disclose or not that they represent  
25 both sides. So that becomes subjective.



1 DR. FOX: Repeat that, please.

2 SENATOR RICE: Okay.

3 I'm buying a piece of property and I'm given  
4 all the information on it and I'm reading it and I  
5 find out later that what I'm told in the contract  
6 I signed is not really true, that becomes legal  
7 because my contract really should be viewed by an  
8 attorney. A lot of people don't get an attorney,  
9 they review it themselves; maybe that's a  
10 mistake. So that's kind of hard for us to  
11 legislate against to some reasonable degree.

12 The question is whether or not we can have  
13 some language where one believes that is the case  
14 whether or not we can bring them into mediation.  
15 I think we'll get barred because the State can't  
16 litigate to a private party in those  
17 circumstances.

18 I'm not an attorney but that's my belief.

19 I've been around a long time and been involved in  
20 a lot of things. The way you stated it, that's  
21 the way it comes up in terms of how... That may  
22 very well be the course. It may be deceptive;  
23 deceptive to the point that we can get the  
24 Consumer Affairs involved and we can enforce those  
25 rules but it is not -- that kind of deception is



1       where the contract is written and it's clearly  
2       written to the understanding that these things  
3       going to happen. If they don't happen, it's a  
4       thin line what we can do and I'm being honest  
5       about that. But I'm not an attorney. Once again,  
6       there are attorneys here who may be able to give  
7       you some more direction.

8               We will try to prevent everything we can. We  
9       try to do what we can to avoid litigation and the  
10      situation you're hearing here because those that  
11      are clearly code violations that should never have  
12      occurred in the first place because the law is  
13      very clear. If I'm going to open the ground up,  
14      before I cover the hole I have to have somebody  
15      look at it and certify it's okay. If I'm going to  
16      put a foundation in, someone is supposed to look  
17      at it.

18             In other words, the law is set up in such a  
19      way it almost clearly separates like a puzzle; it  
20      has to be looked at before the next piece goes  
21      in. That's not happening. And if it is being  
22      looked at, it's not being properly certified as to  
23      the realities of what's there; the veracity of  
24      what's there; the integrity of what's there.

25             DR. FOX: Thank you.



1           Number two, why can't we go after these  
2           builders and stop them from changing their names  
3           and continuing building under a different name so  
4           that they can continue doing the same thing to  
5           others?

6           SENATOR KARCHER: I think that's one of the  
7           points that was raised in the report. That these  
8           organizations create an LLC, they come in, they  
9           build your home, and then they disband and really  
10          disappear. We need, you know, greater reporting,  
11          more accountability, greater transparency. Have  
12          that available to the consumer to make sure that  
13          people can see who it is they're dealing with and  
14          what their track records are. I think that's one  
15          of the goals that we need to embrace and make sure  
16          that we -- I think Assemblywoman Beck had a very  
17          good valid point. That we need to have greater  
18          ability by having the Social Security numbers of  
19          the builders and those associated with it to  
20          really track where they've been and where they're  
21          going and how we can get in touch with them once  
22          they completed your job.

23          So those are things that I think are going to  
24          be seriously looked at.

25          DR. FOX: Okay.



1           SENATOR RICE: Just one of the things that  
2           I'm experiencing and to continue to cross my mind  
3           are some of the things I use locally on council.  
4           Looking how we bar people from the state, period,  
5           how can we -- I know what you're talking about,  
6           I've experienced that, too. How do you bar a U.S.  
7           individual from being a participant in other  
8           corporations or partnerships, LLC that's doing the  
9           same type of work? We can define that in the  
10          State of New Jersey. If you want to do it, you go  
11          someplace else. If anyone pick up your  
12          corporation, it's clear she can't pick you up.  
13          It's things like that we have to deal with.  
14          People understand that you're being watched;  
15          you're being watched as a little person, an  
16          individual person or LLC, or big person, et  
17          cetera. And those are the kinds of things that  
18          we're looking at how we can be fair about it so we  
19          don't harm people's life-styles because somebody  
20          don't like somebody but how if, in fact, the issue  
21          is valid, it's substantial enough to warrant that  
22          type of a penalty with the fine, et cetera, how do  
23          we do that? How do we do it for a period of  
24          time? Maybe you learned your lesson after two  
25          years or three years, because we do bar people



1 from doing work in the State of New Jersey.  
2 That's the legal method. So we can probably  
3 incorporate some kind of penalty.

4 DR. FOX: Okay. Thank you.

5 Another point is the State -- I believe the  
6 state law says that if there's code violations,  
7 the township must enforce it to have the builder  
8 fix them. And in my case the township actually  
9 issued code violations three years after -- we  
10 moved in after three years of writing letters and  
11 a lot of heartache. The code violations were  
12 issued four years ago; they still are not taken  
13 care of.

14 How do you get the township to enforce the  
15 builder to fix the code violations?

16 SENATOR RICE: Eventually we want to start  
17 holding municipalities responsible. And even if  
18 you have a mayor and council who have the ability  
19 to bring personnel in and understand the  
20 credentials that we require at the state level,  
21 you don't have to pay them. The taxes go up  
22 annually because you're paying me to do my job  
23 within reason.

24 The other side of that is that we're going to  
25 have to make sure that we tighten the laws up so



1       that there has to be responsive and reasonable  
2       time frames. Right now there's too much gap,  
3       there's too much openness. I mean, we can divide  
4       it up, and I can take my city for an example,  
5       which is a booming city, everybody talk about it  
6       but no one come there; I'm talking about the  
7       media, except for the Star Ledger and they beat us  
8       up. We're building all over the place. The  
9       problem is we're building so much, which is a  
10      great thing, but we're so thinned out with  
11      inspectors; we had some that's bad, we got rid of  
12      them; it's hard to hire inspectors. But we're not  
13      using the dollars necessary to bring additional  
14      resource on to keep this going. With our ten  
15      inspectors and they can manage the work load for  
16      100 units and all of a sudden I'm doing three and  
17      four, I can't keep ten inspectors. I've got to  
18      get some qualified people. I've got to keep the  
19      load moving. But it shouldn't take four years in  
20      any respect; it shouldn't take two years in any  
21      respect. At that point the State may have to  
22      bypass the municipality and say its our  
23      responsibility to go in there and take over that  
24      whole code enforcement office, if necessary, and  
25      find out what's going on.



1           We have to look at that. It may not  
2 necessarily be this Bill. There may be some  
3 things we can do here. But the reason I speak the  
4 way I do because I've lived this. And, in fact,  
5 I'm the same Ron Righteous you saw in the paper  
6 with Tony Gun, myself and Mike Rameriz, I was the  
7 bad guy. I wasn't the bad guy. The problem is I  
8 had a guy who's stepping on the old boy's network,  
9 crossing out the job right, it's a fine building  
10 and the system is trying to hold him back;  
11 stopping and slowing him down, trying to bankrupt  
12 him - he's still around, by the way - and built  
13 it.

14           And so I've learned during the time that I  
15 left the council what's happening behind the  
16 scenes and industry and was very shocked about  
17 it. To be quite frank, I couldn't work in that  
18 industry. I would hurt somebody if I was a  
19 contractor, a developer or homeowner. It's a very  
20 nasty business. The problem is I'm a Senator and  
21 I know it. And I have the authority to say, okay,  
22 it's not going to happen to Mrs. Smith any more,  
23 Mr. Goldstein or Mrs. Johnson over here. And it's  
24 not going to happen to a good contractor or a good  
25 developer or builder. And it's not going to



1           happen to a subcontractor who's doing good. All  
2           of the bums out there, we've got to find a way of  
3           tightening them up, removing them, getting them  
4           out of Dodge, if you will, quote/unquote, while  
5           the good guys are still around and do what the  
6           public expects them to do.

7           DR. FOX: In my personal case, I've already  
8           spent a lot of money, thousands and thousands of  
9           dollars to fix things in the house. However, I've  
10          kind of stuck firm on this code violation,  
11          especially since the state laws came in and said  
12          that the Township should enforce the builder to  
13          fix them. Ironically I got the Township to issue  
14          the violations, and there were thirteen of them,  
15          and there was about twenty-five other workmanship  
16          issues, which they didn't call violations, but  
17          even the Township admitted it. However, it's been  
18          seven years and it's been over three-and-a-half  
19          years and nothing has happened. And we live in  
20          the town; we have children in the town; we don't  
21          want to fight with the town, if you understand  
22          what I'm saying. But certainly there has to be  
23          something higher up, the State or whatever to come  
24          in and say you're not following our suggestions  
25          and the builder has to fix them.



1           SENATOR KARCHER: So how long did you live in  
2 the home before they then issued the violations?

3           DR. FOX: About three years.

4           SENATOR KARCHER: So they're on the hook,  
5 though, for having given you a C of O?

6           DR. FOX: Sure.

7           SENATOR KARCHER: Then that becomes a problem  
8 with municipalities because they don't want to  
9 look like they were deficient in some way now  
10 they've let you live for three years.

11          DR. FOX: But they admitted it. I mean, they  
12 came out and they said yes. Because I hired my  
13 own people to go in, very reputable people to come  
14 in and say these are violations and they could not  
15 discard them and they had to address them. And  
16 they agreed, ironically throughout the time when  
17 we had problems they kept sending in the same  
18 building inspector who initially inspected the  
19 home. What did they think was going to happen.

20          SENATOR KARCHER: Actually, that was one of  
21 the recommendations in the SCI report, or maybe by  
22 DCA, that they will not be sending the same  
23 inspector out. If that inspector missed it the  
24 first time, chances are that they will miss it the  
25 second time. It's just inappropriate for them to



1 be back looking again.

2 And in terms of the state coming in, we've  
3 experienced this right here in this town, not in  
4 the residential construction but with the school  
5 construction. You may be familiar and read about  
6 it in the paper, that the middle school is not  
7 opening because there were problems with  
8 inspection. There were problems with code  
9 violations. Violations on part of the building  
10 that had been occupied for many years and was only  
11 discovered when they were trying to look into the  
12 new addition to the building. I intervened. Got  
13 DCA to send an inspector. An inspector will be on  
14 site around the clock and available so that when  
15 things are done on that punch list, they can have  
16 it inspected immediately. Why should the  
17 inspector who missed it years ago and all through  
18 the summer be able to go and give the okay now.

19 And I think the DCA is willing and able now  
20 to take a much more aggressive role in doing these  
21 things in terms of -- I see some head shaking but  
22 I know in terms of this not residential  
23 construction they were willing to come in. And  
24 it's a matter of maybe this squeaky wheel, I went,  
25 complained, got 1,400 kids who don't have a school



1 that they needed to address it immediately. And  
2 they're doing it on that issue. But clearly  
3 you're right, there needs to be some  
4 accountability going upstream that way.

5 DR. FOX: Thank you.

6 Two last real quick points that I think are  
7 very helpful.

8 Number one, I think we need to give a punch  
9 list to the builder and have the time that the  
10 builder is allowed to take care of the punch list  
11 be greater than one year; actually be up to maybe  
12 three years. What happens is you give a punch  
13 list and let's say there's thirty things major on  
14 the punch list. The builder might do every month  
15 one or two things; by the time his year is up and  
16 there's twelve months and there's twenty-two  
17 things left on the punch list and he's "yesing"  
18 you to death and he says, oh, it's after a year, I  
19 don't do anything any more, you have to go to your  
20 homeowners and that's it. And we talked about the  
21 homeowners, that's a joke, because that 210  
22 builder warranty is only if the house is falling  
23 down and is falling into the sea.

24 So that punch list that you give at the time  
25 of closing, there should be a time where that



1 builder has to do it. And if he tries to get it  
2 so that the year goes by and then he's off the  
3 hook, I think that needs to be addressed majorly.

4 The last thing is I think it's a simple find  
5 if a contractor is unlicensed or a subcontractor  
6 is unlicensed. In my particular instance we found  
7 out that there was a subcontractor that was not  
8 licensed. And I don't know if there's any  
9 provisions in the new legislation addressing this,  
10 if a contractor is not licensed or hires a  
11 subcontractor who's not licensed.

12 What is it, a misdemeanor now or what is it,  
13 anything?

14 SENATOR RICE: The law would require you, the  
15 new law would require you to register as a  
16 contractor in the State of New Jersey. I'm not  
17 sure -- I don't think it's a misdemeanor. I think  
18 it's a crime of the -- what is it, Bob?

19 MR. ROTHBERG: Probably a fine or something.  
20 \$100 or something.

21 SENATOR RICE: Well, no. That may be first  
22 violation or something like that. I think it  
23 includes -- it was in legislation. I remember us  
24 passing that Bill into law recently.

25 While he's looking that up, if I can through



1 the Chair, one of the things that people write up  
2 about me is I'm old military, I'm Marine Corps  
3 recon guy, former cop, so sometimes I recognize  
4 you need special team members to do special  
5 things. And I'm really thinking about having the  
6 legislation mandate that the inspector general's  
7 office or the State Attorney General's office have  
8 to have kind of an inspection squat team. And the  
9 inspection squat team would be a small group of  
10 people, we can determine by the number of  
11 complaints, but that number should be two, three,  
12 or four people, so when we get these kinds of  
13 complaints, the municipality is not addressing it  
14 in a timely fashion, it goes to the State DCA,  
15 they're not addressing it, then they move in right  
16 away. But if they move in, everybody know that  
17 they find some problems. They work right in the  
18 Inspector General's office, the AG's office and  
19 automatically it's going to kick into an  
20 investigation.

21 DR. FOX: The last comment I want to make is  
22 what they try to do is wear you down until seven  
23 years pass and then you decide to fix everything  
24 yourself. And that's what they want you to do.  
25 And then who can fight for seven years and have



1 unfinished basements and problems and code  
2 violations, et cetera. And with time you just end  
3 up paying it yourself or taking out loans or  
4 whatever the case may be. But hopefully something  
5 can happen with the people in the past; and in the  
6 future certainly that these could get better.

7 Thank you.

8 SENATOR KARCHER: Thank you.

9 Senator, I'll cosponsor that Bill with you.

10 MR. BROPHY: If I can just make a few quick  
11 comments. Eric Brophy, B-r-o-p-h-y. I'm the  
12 president of the Allaire Country Club Estates  
13 Condominium Association, which was a very large  
14 part of the SCI investigation. In fact, two of  
15 the principals of our builder testified at the  
16 hearings, as well as the township inspector, the  
17 building code inspector.

18 I think it's very important that both Senator  
19 Karcher and Senator Rice pointed out the  
20 importance of accountability. And I think that  
21 accountability has to come on two tracks. The  
22 first has to be the actual officials in the  
23 township need to be held accountable for not doing  
24 what they're supposed to do; and that was our case  
25 at Allaire. We had a building code inspector who



1 admitted not doing the inspections. His testimony  
2 at the time was that there was too much building  
3 going on. In the township there was over 800  
4 units being built at one time throughout the  
5 township, which included Four Seasons, and that he  
6 just didn't have the ability to inspect all of the  
7 units.

8 As a result, our association suffered, Four  
9 Seasons has suffered, and individual homeowners  
10 have suffered, as well, profit homeowners because  
11 of that lack of accountability of the building  
12 inspector and of the township committee, which I  
13 think, you know, should have some responsibility,  
14 as well. They're the people that hired this  
15 person. They did nothing to oversee and to make  
16 sure that the person was doing what they were  
17 supposed to.

18 And obviously the other accountability, which  
19 I think is for the most part provided for in the  
20 proposed legislation, is the accountability of the  
21 contractors. Obviously there should be something  
22 -- I haven't had the opportunity to review in  
23 full all of the legislation but I can say that  
24 contractors should be held to a standard that if  
25 they're doing work in a township and they have,



1 say, three or more violations where they can't get  
2 the problems corrected in the township within a  
3 reasonable amount of time, they should be banned  
4 from doing work in that township. And that's  
5 something -- the builder that was the cause in our  
6 situation was Victor at Allaire, that company, not  
7 in that name, but those same principals are still  
8 doing work in our township. And how our township  
9 can allow them to do the work knowing these  
10 problems that have been going on is just  
11 outrageous to me.

12 I also -- something that hasn't been brought  
13 up tonight that I think is important is the  
14 correlation between the accountability aspect of  
15 it and pay to play. Nobody has mentioned that  
16 tonight and I think those two go hand-in-hand.  
17 Because I know in our situation we had a township  
18 building inspector who was formally an employee of  
19 the township engineer who obviously contributed to  
20 the township committee campaigns over the previous  
21 years. That's something that -- the quid pro quo  
22 mentality is something that needs to be eradicated  
23 completely. And I'm hoping that at some point the  
24 legislature can put forth some in addition to a  
25 real comprehensive pay-to-play statute that



1 applies to municipalities that has actual teeth in  
2 it. And that coupled with a hopefully uniform  
3 municipal ethics reform of some fashion to hold  
4 these people responsible for what they're not  
5 doing as opposed to what they do do I think is  
6 something that's important.

7 And I'd also like to echo what Mr. Dougherty  
8 said earlier, the attorney that spoke before on  
9 the Consumer Fraud Act. I think it's important  
10 that the Consumer Fraud Act be amended in the way  
11 that he suggested. It's one line. It's the last  
12 sentence in the regulation. I'm an attorney and I  
13 do a lot of this kind of work, a lot of  
14 construction work and a lot of consumer fraud  
15 work, and if that section were taken out of the  
16 administrative regulation, it would go a long way  
17 to helping a lot of people. Because holding a  
18 Consumer Fraud Claim over a contractor's head is  
19 the best ammunition that any homeowner could  
20 have. There can be debate over what the penalty  
21 should be against that person but that's something  
22 for another day. But I would echo, I think that's  
23 something that's very important, too. And I hope  
24 the legislature would consider doing that, just  
25 redacting those ten words.



1           Finally, I just want to make a comment to  
2           everyone here. I can give the perspective of what  
3           happens when you do litigate. Our association,  
4           unfortunately, was unable to have the township  
5           take our side and to come to a compromise and to  
6           help us resolve our issues with the builder. As a  
7           result, we were forced to litigate with the  
8           builder. That was litigation that was protracted  
9           for approximately three-and-a-half years. We  
10          eventually settled the case for about a third of  
11          what the real case was worth. And we were at a  
12          point in the case where at a stalemate where we  
13          had to make a decision based upon the interests of  
14          our association, our members on whether we could  
15          afford to continue with the litigation. And at  
16          that point we had spent a few \$100,000 trying to  
17          litigate with this builder who just seemed to drag  
18          out this case for years and years.

19          We eventually settled. A few months after we  
20          settled the Supreme Court came along with the DKM  
21          case, which I'm sure you're both fully aware of,  
22          which allowed the township then to go back and  
23          issue code violations against the builder. We  
24          asked the township to do that. The township  
25          obviously has the wherewithal and the ability to



1           make their own decisions. They decided that they  
2           were going to issue those violations on very  
3           specific issues. They did that. The builder has  
4           now appealed those code violations to the  
5           Construction Board of Appeals, which again echoes  
6           some of the problems earlier. The Monmouth County  
7           Board of Construction Appeals said we don't want  
8           to make the decision because you had a previous  
9           lawsuit and a settlement agreement and we're not  
10          going to make the decision until you have a judge  
11          make the decision for you on whether or not your  
12          settlement includes these issues.

13                 Now, I don't mean to belabor this point but I  
14          think it's important. We have now, as the result  
15          of the Construction Board of Appeals deciding not  
16          to make a decision, which legally I don't think  
17          they have the right to do, they have to make a  
18          decision one way or the other, but the builder has  
19          now instituted a second lawsuit against us and  
20          against the township on these matters. So now we  
21          are again expending fees, attorneys' fees and  
22          costs having to defend ourselves now in the case  
23          by the builder all because we're trying to get our  
24          association in order.

25                 The fact of the matter is, over the past



1 year-and-a-half, I think, since our settlement,  
2 we've expended probably close to 50% of the  
3 settlement, plus we put out additional transition  
4 monies probably to the tune of another \$230,000,  
5 \$240,000.

6 So these are issues that are important for  
7 everyone to know that if you do decide to go to  
8 the litigation route, it's going to come at a  
9 heavy price. And I think everyone is aware of  
10 that but I'm just trying to put some numbers on it  
11 so that people understand what it's about. We  
12 have a 460 unit development, which is a  
13 significant size, so it may be more costly than  
14 for others, but it's something that's important, I  
15 think, to note.

16 And I hope that you can take the suggestions  
17 that I've made and hopefully take them back to the  
18 rest of the Senate and get something done to hold  
19 these people accountable for what they're not  
20 doing.

21 SENATOR KARCHER: Thank you.

22 SENATOR RICE: I know there's several  
23 attorneys here. Anyone else, but typically put  
24 out to the attorneys, some kind of way we have a  
25 process in this country and in this state that's



1 constitutional driven. But even with the  
2 constitution, there must be a way that we can  
3 legislate the expedition of some of these  
4 processes.

5 See, I think what's really strapping is that  
6 it's not whether you go into mediation versus  
7 courts versus this sometimes, because sometimes if  
8 you go into mediation you got to go to court  
9 anyway. You're hung up for two years for somebody  
10 to hear your case then people change around.

11 We need to think, Senator, about how we can  
12 in these kind of cases eliminate these four and  
13 five years process of appeal. You want to appeal,  
14 fine, appeal it. You know what, then, judge,  
15 you're going to hear them all. My point is that I  
16 don't know if we need to have special judges of  
17 the law and mandate that. I don't know what we  
18 have to do. We need some type of way --  
19 everything we do in the world there are  
20 violations; we know that. But in these kinds of  
21 situations, no way an association should have --  
22 first of all, it starts off with the phases where  
23 the owner owns it, you have to really pay to fight  
24 with your own association; that's one scenario.  
25 Then when there's a turnover you have problems;



1       you got to fight the city; you got to fight the  
2       owner. So you're really fighting two giants. You  
3       say, okay, I'll take them on but the process  
4       starts to weaken you over a period of time.

5               So just if you have any thoughts about that,  
6       please get them up to us right away. It may be  
7       separate legislations. I don't have a nocturnal  
8       brain so I can't really figure it all out right  
9       now.

10              MR. BROPHY: Senator, I would be more than  
11       happy to submit something to you but I can -- just  
12       quickly for the record I can just give you two  
13       quick suggestions.

14              When you file a civil lawsuit in this state,  
15       you have to file a Case Information Statement.  
16       And on that document you have to check off what  
17       track it's going to be on and it depends on the  
18       type of case. The shortest track now is 180  
19       days. You can create a fast track that you can  
20       shorten that time period in half and make it a  
21       ninety day period fast track case for these types  
22       of construction defects.

23              Now, if that can be incorporated into the  
24       law, I think that would be a very quick way to get  
25       it resolved.



1           The second way that you may be able to do it  
2           is that if these types of cases are instituted,  
3           you would also have to check off that type of case  
4           and then it can be assigned to a special master  
5           who can direct the case and manage the case on a  
6           fast tract.

7           I think it's very simple to do. I'll be more  
8           than happy to put that in writing, if you want,  
9           and submit it to you. But those are very easy  
10          ways that it can be resolved, just put it on fast  
11          track.

12          SENATOR RICE: If you do that, I would  
13          appreciate it. I'll consult with Senator  
14          Karcher. She has a very good legal mind and comes  
15          from good legal stock so maybe we can do  
16          something.

17          I would love to do something, Senator, in  
18          that vein with this legislation to be passed.

19          MR. BROPHY: I would appreciate that. Thank  
20          you.

21          SENATOR KARCHER: We're going to take a lull  
22          for about five minutes. And we have three more  
23          people to testify then we need to get the Senator  
24          back on the road to Newark.

25          (Brief recess was taken.)



1           SENATOR KARCHER:  Senator Rice's family is  
2           going to think we pitched a tent for him here.

3           We have Vito DeMonte from Renaissance at  
4           Manchester.  You're up.

5           MR. DeMONTE:  I live in a community, 1,900  
6           home community, Renaissance at Manchester built by  
7           Centex -- Calton, not Centex.  It began ten years  
8           ago; they're finishing the last few houses now.

9           I just want to make two points.  We've heard  
10          so many detailed descriptions of problems and I  
11          can't top it; I can't even come close, to be  
12          honest with you.  But there are a couple of issues  
13          that I see, at least one of which has been touched  
14          on already.

15          As was discussed earlier we have these  
16          overworked, sometimes under-prepared but generally  
17          overworked building inspectors in a planned  
18          community like Renaissance with 1,900 homes; and  
19          Ocean County is plastered with these communities.  
20          I lived in Monmouth County for forty years; I'm  
21          rethinking my move.

22          But you've got the building inspectors who  
23          are overworked.  So they're coming around and  
24          looking at the same houses they see every day so  
25          the inspections go pretty quickly.  Now the



1        assumption is that that particular house, they  
2        issue a CO, that particular home is approved. So  
3        when the time comes for the performance bond  
4        remittance back to the builder, the individual  
5        property owner's problems don't exist any more  
6        because they got a CO so everything is okay  
7        according to the town engineer.

8                The problem is that these problems keep going  
9        on. You report the problems to the property  
10       management office of the association. And I don't  
11       represent the association, I represent the  
12       individual homeowners of the association because  
13       I'm talking about individual homeowner problems.  
14       You take your problems to the property management  
15       office; they refer it to the landscape committee,  
16       who in turn says, well, we'll give it to the  
17       transition committee but the transition committee  
18       is only working transition of the common  
19       elements. That's all the POS allows them to do.  
20       So performance bonds have been returned for the  
21       first two sections of Renaissance but yet there  
22       are still problems that homeowners have.

23                So I don't know if you can legislate having  
24       the town to assure -- ensure that all the problems  
25       are resolved on those individual homes, as well as



1 the common element problems in a planned  
2 community. But that would be my one point.

3 I guess my other point is that the builders  
4 are not -- a comment on S-2046. It appears to  
5 offer protection in a planned community to the  
6 association but perhaps should have some tie-in to  
7 the individual homeowners, as well.

8 SENATOR RICE: Sir, what happened in 2046, I  
9 believe -- Bob, you can look at the legislation.

10 In concept what we tried to do there is -- a  
11 lot of these units are built in phases. And what  
12 we're saying and what happens is the issue you're  
13 talking about is the issue where the developer --  
14 the owner is actually on the board until  
15 everything is complete; until it's three phases.

16 This legislation says, no, that's not going  
17 to happen any more. This legislation is saying  
18 that when you complete phase one, you're going to  
19 turn that over to those unit owners with their own  
20 elected board. Then at that point the board has  
21 the capacity to identify problems and get them  
22 resolved through the legislation, which means that  
23 the developer or the owner, if you will, for lack  
24 of a better word, lose the control they now have  
25 until the end of that process. That's in general



1           what this is doing.

2                   Bob, you want to explain a little bit more.

3                   MR. ROTHBERG: That's effectively the purpose  
4           of 2046, to empower the minority -- the unit owner  
5           representatives during transition with some  
6           power. And to -- well, it says in the case of a  
7           defect in the common elements or other property  
8           administered by the association, it allows a claim  
9           under new warranty to be filed by an association  
10          at any time within a year following termination  
11          the developer controlled the association.

12                   MR. DeMONTE: For the common elements?

13                   MR. ROTHBERG: For common elements, right.

14                   Or during a period prior to termination the  
15          developer controlled the association may be filed  
16          in the name of the association not later than  
17          forty-five days after expiration of the warranty  
18          period by members of the board who are elected by  
19          the unit owners.

20                   So the idea of 2046 -- there's one other  
21          point.

22                   An owner or a group of owners of a unit or  
23          units in a planned real estate development may not  
24          later than forty-five days after expiration of the  
25          applicable warranty period file a claim in the



1 name of the association with regard to any defect  
2 in the common elements or other property  
3 administered by the association that effects only  
4 the units belonging to such owner or owners.

5 So those are provisions of 2046.

6 MR. DeMONTE: So the individual -- a group of  
7 individual homeowners can file, you say, on behalf  
8 of the association?

9 SENATOR RICE: The minority -- in your phase  
10 you're going to have the unit -- the homeowners --  
11 I hate this language, unit owners. They're really  
12 the owners of the building. When I say unit, I'm  
13 talking about the owner of that piece of  
14 property. I'll call you tenants, for lack of a  
15 better word, but you're not tenants, okay.

16 You're going to be able to have your own  
17 association but you're still the minority of this  
18 big umbrella piece. When that phase is completed,  
19 in fact, what happens is you'll have the authority  
20 as a minority group and this big piece to start  
21 making some decisions and correct some things  
22 yourself with the authority or power you need as  
23 an elected board. And the transition phase,  
24 either the board can do it as a board or a  
25 committee of that minority elected board.



1           Yes, that's what's happened under this  
2           legislation. Because we know what's going on and  
3           it does not make any sense if I'm finished and I'm  
4           over here, you may not even start that other piece  
5           of project for another nine months or a year and  
6           in the meanwhile you're controlling everybody's  
7           life, we're moved in and having problems. That's  
8           the intent of this.

9           MR. DeMONTE: Okay. Good. Thank you very  
10          much.

11          SENATOR KARCHER: Thank you.  
12          Bringing us back to Manalapan. Heloisa  
13          Greene and Jeannie White.

14          MS. GREENE: Hi. My name is Heloisa Greene.  
15          H-e-l-o-i-s-a, G-r-e-e-n-e.

16          I asking the legislature to try to clarify  
17          and revise the codes of construction in a way that  
18          does not led to interpretation by anybody else.  
19          That to be there in black and white is what it  
20          really means. Because they say that's not what  
21          the code means, that's something else.

22          So that make sense?

23          SENATOR KARCHER: I think that's a part of  
24          the recommendations, that the code has not been  
25          updated in ten years and it doesn't reflect some



1 of the changes in development in its construction,  
2 materials and techniques. So I think that is  
3 something that is recommended. I don't know if  
4 that's something that has been seriously  
5 considered. It's not in this legislation we're  
6 talking about this evening. But I know that it is  
7 a recommendation and it is something that is --

8 SENATOR RICE: In terms of updating the  
9 uniform code, yes, there's language -- Bob.

10 Staff is a little lazy here tonight. He's  
11 trying to take notes, too.

12 We have some language dealing with updating  
13 the code, right?

14 MR. ROTHBERG: Not exactly what you're  
15 talking about.

16 MS. GREENE: I give an example.

17 Say something in the code that every  
18 structure that you fix if it have studs, you  
19 cannot cut those. If you cut them, you need  
20 engineer design approve and signed by engineer to  
21 do it. I recently had my house fixed, they come  
22 to fix it. It was constructed by Calton Homes.  
23 It been like five or six years that I been  
24 fighting for it. And they cut the studs under the  
25 windows on my first floor and put all the studs on



1 the side as braces without engineer approval  
2 drawing for it. And the code says they can do  
3 that and they cut it. And they show the guy that  
4 was doing the job and he said no, the  
5 interpretation is not that. That's not what it  
6 means.

7 So I'd like the codes to be very specific and  
8 be very clear. So somebody like me that does not  
9 have engineer degree can understand.

10 SENATOR RICE: If I hear you correctly, you  
11 had the specs there and there was an element of  
12 the building structure that should have been put  
13 in a certain way according to the specs and  
14 certain things should be used based on the cut  
15 sheets. And rather than putting those things  
16 there, someone decided to fix it the way they  
17 want. It was not a modification. It was not a  
18 modification to the drawings or the specs. It was  
19 not approved by an architect or engineer.

20 Let me just say this to you. I'm not so sure  
21 we need to change the codes. The codes are clear  
22 right now. You have to do things according to the  
23 code. Depending on what you're doing, there are  
24 certain types of materials you have to use within  
25 the specs that have to meet code. There are what



1       they call cut sheets out there to determine the  
2       specifications, whether they have the right  
3       dimensions, the right weight, the right whatever  
4       is required. If anyone was to change or  
5       substitute what the architects have put into the  
6       specs, they have to have a architect or engineer  
7       sign off on those changes. If not, they cannot  
8       modify those plans. They can't use their own  
9       volition, if you will, on something that's  
10      substantive like that.

11             So they either do that by going back and  
12      modifying the drawing. They do that by having the  
13      architect or engineer sign off in writing on that  
14      one way or the other. So it's not the code. It's  
15      someone violating the, quote/unquote, the rules  
16      and regulations and the authority on doing what  
17      they want. But when the inspector come, they  
18      should pick up on that. And if the inspector came  
19      and didn't pick up on it, the inspector would have  
20      to certify it's okay.

21             MS. GREENE: The inspector say it was okay  
22      but didn't have engineer approval for that  
23      change. I have a piece of the code here.

24             SENATOR RICE: If the inspector passed this  
25      without it being signed off by an engineer or



1 architect, that's not a code change, that's an  
2 enforcement change.

3 MS. GREENE: So the inspector have the right  
4 to say it's okay?

5 SENATOR RICE: He has the right to say it but  
6 he's also accountable, particularly when the  
7 architect or engineer come back and says that  
8 building is not going to hold. We didn't  
9 authorize that.

10 MS. GREENE: I'm sorry. I don't understand  
11 you.

12 SENATOR RICE: He has a right to do  
13 whatever he wants to do. It doesn't mean he's  
14 right in doing it.

15 My point is that if what he did is in  
16 violation -- if what he did is not signed off by  
17 an architect or engineer or it creates a problem  
18 for that structure, for example if I have to put a  
19 beam in and I don't put the beam in and the  
20 inspector comes and says okay but the architect  
21 put it on the plan, the engineer put it on the  
22 plan and instruction is that thing is going to  
23 fall, I'm here to say they can't be held  
24 accountable. And that happens with some  
25 inspectors, by the way. And that's why a couple



1 inspectors in my city were terminated recently;  
2 lost their license, in fact, for making decisions  
3 that weren't valid.

4 MS. GREENE: That inspector, Mr. Marini, he  
5 was in my house like maybe a year or two prior to  
6 that time and he said that everything on my house  
7 is just maintenance; my painting, my caulking.  
8 But I was there for three years and I had problems  
9 with my stucco. It actually was deteriorating.  
10 It was falling apart and everything was  
11 maintenance. And the same guy went back to  
12 supervise the job again. The same guy that told  
13 them that everything was my fault was there two or  
14 three years later doing the job. It should make  
15 the same guy come back.

16 SENATOR KARCHER: I mentioned this earlier.  
17 You're right. You're absolutely right. The same  
18 person who has come out to inspect the job and  
19 either missed it or has a different, as the  
20 Senator pointed out, has a different  
21 interpretation, right or wrong, you would think  
22 wrong in this case, but should not be back there  
23 again. Those are things that need to be  
24 addressed.

25 MS. GREENE: Another thing was they agree to



1 fix our homes, to change the facade and put what  
2 we had there before but they're putting what they  
3 want to put. They're not trying to match what we  
4 had before. So I had stones very close together  
5 in front of my house, rock stones and now they are  
6 like little soldiers. It's not what I paid for.  
7 Not what I chose. But I don't have a way  
8 to fight it. I used to have one inch to  
9 one-inch-and-a-quarter between the grout line in  
10 the stones; now I have seven, eight inches in  
11 several spaces. And I mention, look, why don't  
12 you take that small stone for that big one there.  
13 No, we not change it. That's not part of it;  
14 nobody is going to see. The construction killed  
15 my landscape. It's half dead. I give it six  
16 months to see if it going to survive.

17 SENATOR RICE: We may have to at some point  
18 in time talk to the State, to the authorities. We  
19 may have to figure out and tighten up the rules  
20 where that's to be clear that the inspectors, when  
21 they go to a location it's clear they're dealing  
22 and inspecting as per the code required. That  
23 they know what they're looking for. Not to sign  
24 off. May have to make sure they're laying that  
25 down next to the plans or the specs.



1           Because when you go to a construction site,  
2           first of all, when you follow the plans in your  
3           specs, there's more than one copy on file in town  
4           hall, or in our case city hall in the office.

5           Number two, when you go to an open  
6           construction site there's a construction trailer  
7           there normally with those designs and plans. So  
8           it seems as though the inspector should be working  
9           with the plans, with the site superintendent or  
10          with whoever is in charge there, and know how to  
11          read those blueprints, if it's a blueprint he's  
12          reading, or whatever document it is. Know  
13          scaling, if it requires scaling; know dimensions,  
14          if it required that.

15          And so we may have to look at that in terms  
16          of what happens. They sign off anyway, but we may  
17          have to find a way to get more accountability to  
18          make sure.

19          The issue about the same inspector going out;  
20          that's a two-way street with me. And that's why  
21          you don't really see anything in the legislation  
22          with that. Because we're getting the opposite.  
23          What we're getting is the inspector went out and  
24          did the job right, believe it or not, and you know  
25          what, the telephone ring politically you're no



1 longer assigned to the east ward, you're now going  
2 to the west ward; and she's going to go out and  
3 inspect and she comes back approved. That's how  
4 the number one person in charge got in trouble,  
5 for moving around like that, moving inspectors  
6 around like that. So that's a two-way street  
7 depending on the relationship with the developer,  
8 the builders and with the town, if you have a bad  
9 town or bad developer you get to. I've known  
10 inspectors retired now that worked every ward  
11 around because he was already writing and the  
12 phone kept ringing. They couldn't get rid of him  
13 because he had more licenses than most of them.

14 So he retired. But the thing is that you got to  
15 watch that two-way street piece.

16 I like it the opposite. I like to say you  
17 had the job, they transfer you over here, you  
18 going back on that job. I like continuity because  
19 now start to get the complaints, then you're going  
20 to be held accountable. At least I know where my  
21 problem is.

22 You understand what I'm saying?

23 MS. GREENE: Yes.

24 SENATOR RICE: But in terms of the codes  
25 themselves, we have to go back and revisit and get



1 more accountability on the inspectors. But I'm  
2 not so sure that switching inspectors is the right  
3 way to go. I understood your concerns but also I  
4 understand that they don't really work in the  
5 field, they just talk to people. I've actually  
6 been out there on a daily basis with this stuff  
7 and I spent six years on the council and I knew my  
8 inspectors; I knew what they were capable of; I  
9 know the politics of my town; and that's why I  
10 left that one alone.

11 Senator.

12 SENATOR KARCHER: Okay.

13 MS. GREENE: Are inspectors required to do  
14 any tests as an inspector, because they should  
15 know the codes?

16 They never show up with any blueprints. They  
17 never compare the drawing to what is there. I  
18 never saw it in nine-and-a-half years I been  
19 there, he compare any drawing with what they  
20 seeing.

21 The first year I was in the house I had one  
22 inspection and it was found that the walkout  
23 basement sliding door was holding the weight of my  
24 two other floors. So it was caving in. So they  
25 came right away and fixed that. Put a big piece



1 of wood there, piece of beam. And then they put  
2 two more metal ones in the basement also to  
3 support the other side of the house on the family  
4 room and the room upstairs. That was in the first  
5 year. Then we start to find out all the other  
6 problems and the braces. My house had no braces.  
7 So on the main part of the house I count it was  
8 150 pieces of two-by-four that went up. So there  
9 was no braces before. And I did not count what  
10 they did to bring access to the garage.

11 So that was like four or five years I live in  
12 the house and now they did that job and really  
13 it's a mediocre job. It's not a job that would  
14 pass by any standard by a house that was worse.

15 SENATOR RICE: Is it completed now?

16 MS. GREENE: Well, actually they are trying  
17 for three weeks now to fix a little cut that they  
18 made in the wood that they cannot know what kind  
19 put in use. They tried three or four things and  
20 they are standing. Every day I wake up with some  
21 guy standing there in front of my door.

22 SENATOR KARCHER: But, again, it's the same  
23 type of story we've heard throughout the evening.  
24 You paid for your dream home and it's turned into  
25 a nightmare for you. And even when they tried to



1 remediate it, it wasn't done to the standards.  
2 You said about the stones in the front, you paid  
3 and expected a house that would have this kind of  
4 stone work and now you have to, when they're there  
5 inspecting you, to accept stone work that is not  
6 what you had paid for and came to expect for your  
7 home.

8 Thank you.

9 MS. WHITE: Hi. My name is Jeannie White. I  
10 live on Molly Pitcher Drive in Manalapan Chase.

11 Now, my home took a lot longer to build  
12 because we custom built it because I have a  
13 multiply handicap child. Calton Home said we'd be  
14 more than pleased to build it for you. They wrote  
15 us up in the newspaper back in November of '96,  
16 how they're going to help this family with five  
17 children.

18 Well, they've neglected to install the house  
19 with the proper electricity. I have a daughter  
20 who is on an oxygenator and when I turned it on,  
21 it browned out my house. And one of the Calton  
22 guys came to my home and said so buy your daughter  
23 a generator. Let me tell you how fuming that  
24 was. That really was one issue.

25 New Jersey Central Power and Light had to



1       come and say your house wasn't adequate enough  
2       with the power in it. We had to call an outside  
3       electrician in Manalapan here to put in a whole  
4       other panel. I'm 5'4" and I can't reach the panel  
5       in my basement; okay. My husband is 6'7", so my  
6       panel is up high. We have a nine foot basement --  
7       our basement is nine foot high. Because the  
8       electricians forgot to bring the wiring down into  
9       the basement but that passed code. That's one  
10      issue.

11             Never mind that she's disabled that I built a  
12      handicap in-law suite on the side of my house,  
13      which has a ramp that walks up, just goes up to  
14      it; the walkway in the past nine years sinks.  
15      Sinks. So your Manalapan school teachers trip all  
16      over it. You have therapists, my private duty  
17      nurses, family members that can't get the  
18      wheelchair in and out of the house; but that was  
19      done by code.

20             I have issues of never mind the electricity  
21      with the alarm system, but the builder doesn't  
22      have to stand behind an alarm system guy or the  
23      township. So I paid the builder \$10,000 for a  
24      home theater system and alarm system, and guess  
25      what, no one is responsible because he never put



1 wires in. I have holes in my ceiling with wires  
2 for speakers but nothing there. But no one can  
3 stand by it because by law, no one has to stand  
4 behind this guy, which is bizarre.

5 Getting back to, you know, other little  
6 things with the house with the access panel. My  
7 daughter is in a lift that goes in the ceiling.  
8 We paid extra money to put trusses in the  
9 ceiling. They even forgot to put the access panel  
10 so we can put her in the lift. So there's no  
11 access panels in the house. I have six bathrooms  
12 in my house. You can't turn a hair dryer on and  
13 have the oven on at the same time without blowing  
14 the fuses. But GFIs weren't in there. So the  
15 house didn't come with a plug for a refrigerator  
16 because that's an extra item.

17 So I paid over a half a million dollars for a  
18 house that didn't have adequate electricity,  
19 adequate flooring. They had to take the side of  
20 my house off and re-beam underneath my house  
21 because it was sinking. So I'm a little stressed  
22 that I have these things going. The alarm system  
23 is nothing. My thing is that my kids aren't  
24 safe. The carbon monoxide alarms go off when they  
25 want. So they came in and said just dismantle it;



1       you don't have one. So I really think the builder  
2       should step up and fix these things. The town  
3       said they didn't have to.

4               Now, they've done some things but my next  
5       issue is that they're replacing all the stucco.  
6       I'm last on the list now because I have two  
7       entrances to the front of my house. The front  
8       door stoop needs to be replaced and all my stucco  
9       and stone. But I have a ramp that goes to the  
10      side to the front of the house, like you have your  
11      living room -- the best I can describe it as you  
12      know you see people with conservatories, I have a  
13      handicap room there. Well, that stoop has to be  
14      done but there's no way that the builder wants to  
15      deal with it because how am I going to get my  
16      daughter out of the house, I need a ramp to get  
17      her out. So they say live with it or take it up  
18      with an attorney. I went to the town, the town  
19      says go to the attorney. I just feel like I'm  
20      jerked around. I have better things to do than to  
21      be jerked around when it's blatant. So write me a  
22      ramp for my garage, I'll ramp around my garage, or  
23      I'll ramp around the back of my house, but fix my  
24      damn house and let me get on with my life. It  
25      really is monotonous; you know what I mean. It



1           just shouldn't be and they shouldn't be allowed to  
2           get away with this. Never mind Violet helping us  
3           know some of these other things.

4                     But it's 11:25 at night; I can't even think  
5           of half the things.

6                     The alarm system, they told my 80-year-old  
7           mother-in-law the alarm system goes off, I was all  
8           the way over at the intensive care unit at Robert  
9           Wood Johnson, take the scissors and just cut the  
10          wires, it'll shut off. So I called the Manalapan  
11          Police Department to go there and see what you can  
12          do. It's a fire hazard to me having all this  
13          wiring in my house and not working. I think it's  
14          ridiculous. I need someone to step up to the  
15          plate and just fix it. I don't want heads, I just  
16          want it fixed and let me live my life.

17                    SENATOR RICE: Let me ask you a question, if  
18          I can, through the Senator.

19                    Your house is obviously still in this  
20          condition; is that correct, basically?

21                    MS. WHITE: When the guy made the mistake and  
22          said to me go get a generator, he ran for it.  
23          Thank God he ran fast. Now, it's sad, because  
24          people in Calton, you go to church with them, you  
25          do business with them, there are attorneys.



1           There's people -- everybody knows everybody in  
2           town now; we're here a long time. Some things got  
3           fixed but they're not a 100%. I have electrical  
4           shorts all the time.

5           SENATOR RICE: Let me get to the ramp.

6           Was the ramp ever fixed?

7           MS. WHITE: Several times. Matter of fact,  
8           when I went to court in November, it came up  
9           mention again; next day Jackhammers at my house,  
10          they fix it. They fixed it but it's hodgepodge.  
11          It keeps sinking. What they need to do is rip the  
12          whole damn thing out and pack --

13          SENATOR RICE: I'm trying to get to that.

14          That is an ADA issue. What I'm saying is the  
15          house may be falling apart but the State should be  
16          there like night and day on that ADA issue because  
17          now you're talking federal law, too. That's why  
18          I'm asking.

19          When I come to these meetings, I ask strange  
20          stuff sometimes but I have a reason. If I  
21          can't make a move this way, maybe I can make a  
22          move this way. I need to get that in writing  
23          right away, okay, because we need to get the State  
24          out there and compel them to look at the whole  
25          house but compel them to take advantage of the ADA



1 issue. You understand what I'm saying?

2 MS. WHITE: Okay.

3 SENATOR RICE: Once again, now -- this is  
4 Calton.

5 MS. WHITE: Calton now Centex.

6 Another thing, too, what they would do, they  
7 would tell you they'd fix it then they change  
8 people, then -- it's monotonous and after a while  
9 you get fed up. You know what I mean.

10 SENATOR KARCHER: It's a full-time job,  
11 obviously. You've got nothing better to do than  
12 to wait around for someone to come --

13 MS. WHITE: Wear my shoes for a day; I  
14 guarantee you'll throw them back at me.

15 SENATOR KARCHER: The issue with the  
16 electricity, have you had anyone out to say this  
17 is specific to your home and not an overall load  
18 issue for this area?

19 Because that's something that I've been  
20 trying to explore because there's high growth in  
21 this area. We experience blackouts, brownouts  
22 throughout western Monmouth County. And I think  
23 it really is some other issues that we need to  
24 explore with BPU and what the overall capacity  
25 is. And that's something --



1           MS. WHITE: With mine, when it happened and I  
2           made a big thing of it and my husband kind of, he  
3           approached it a little bit aggressively that day,  
4           they came and put two panels in. But they still  
5           couldn't put the panels in correct, okay. My  
6           panels are up in the sky because they didn't bring  
7           the wires down. The guy came in and replaced it,  
8           I had someone in Manalapan, I wouldn't have Wagner  
9           Electric walk back in my house again, we hired  
10          someone else, and the builder did pay for it but  
11          what an inconvenience. But things still aren't a  
12          100%. I'm still tripping things. I'm every once  
13          in a while paying \$95 for the guy to come in and  
14          go, yeah, this is tripped and you're going to need  
15          this. I said what is this; he goes uhhhh, we're  
16          doing the best we can.

17          SENATOR KARCHER: I know this isn't any  
18          comfort but it is something that is happening  
19          across western Monmouth County. We are looking  
20          into that issue separately.

21          MS. WHITE: This shouldn't happen to me.

22          SENATOR KARCHER: No, it shouldn't happen to  
23          anybody and it shouldn't happen particularly when  
24          you've got the child --

25          MS. WHITE: I paid extra. I paid extra.



1 They charged me a fortune.

2 SENATOR KARCHER: And a number of families  
3 across this county and across this area that are  
4 on supplement oxygen, senior citizens when this  
5 happens and they don't know; severe asthmatics  
6 lose their air-conditioning. It is something  
7 we're aware of and we're trying to address. But  
8 you'll have the energy company come in and show  
9 you maps and say we're doing this, we're doing  
10 that, don't worry about it. But clearly it needs  
11 to be addressed, it needs to be a little bit more  
12 aggressive at the State level on BPU to provide  
13 that. Those are requirements as we build-out more  
14 and more of this area, that they can handle the  
15 load.

16 MS. WHITE: Well, that was my main thing.

17 The other thing they gave me extra sewer line  
18 and forgot to clog it up. So we're moved in, all  
19 of a sudden it rains and things happen, everything  
20 is coming through the line into my basement.

21 These are stupid things that the builder has  
22 done. Never mind there are no brackets in the  
23 lolly columns not being right. They took the side  
24 of my house off. Eighteen men were at my house in  
25 one day - I don't have pictures with me because I



1 didn't come prepared tonight - to put beams across  
2 my hundred foot home. They took the whole side of  
3 the house off. Everything in my basement, all the  
4 toys, 75% of it had to be thrown out because the  
5 guys forgot to cover it. I mean, they're toys and  
6 I can lose that, but still it's a lot of money.

7 They ended up destroying everything. I finally  
8 put carpet in, I paint the walls, they come in,  
9 they take off the side of the house, they run  
10 through, put beams. This is absurd. I don't how  
11 it passed code. I don't even know how the  
12 Township did. I don't know how the builder can  
13 get away with this. Everybody involved. I walked  
14 in, yeah, it looks great; okay, they said the  
15 homeowners think it's fine. I feel like I don't  
16 know enough.

17 Then they wouldn't allow my husband have a  
18 project manager to come in, say can we have a  
19 friend because we know somebody in construction,  
20 we'll pay him to come in; no, you can't come on  
21 the property. But you can send this alarm guy and  
22 this home theater guy in and no one here can we be  
23 protected from him. It's against the law for me  
24 to even walk on the property when the house is  
25 being built but why is it all right for them to



1 send this guy and he ripped us off \$10,000 and I  
2 still don't have any recourse. He has another  
3 stranger come in but other people can be but you  
4 have to stay off the ground.

5 So where do we stand? Just fix my house.

6 SENATOR RICE: If you would document at least  
7 some of the things, that ADA will stand out for  
8 us, get it to us. I'll try to work with Senator;  
9 I'll try to work with the Committee to get someone  
10 in. I'm trying to get some movement. I can't  
11 work with everybody by myself individually but  
12 there are some issues that are coming up that I  
13 think will give us an opportunity to give us some  
14 movement going and take advantage of what's  
15 there.

16 I believe the issue that's being addressed in  
17 my Bills relating to inspections of the property,  
18 as well as having copies of the specifications  
19 without cause, I think that magnitude, they can't  
20 tell you you can't go on the property. When my  
21 father built our house up in Pennsylvania, we went  
22 up any time we wanted. About half the time they  
23 weren't there.

24 MS. WHITE: Right. I drove up and down  
25 Washington taking pictures from the back but they



1           didn't want you over there. You know, I'm not  
2           looking to make waves. They tell me not to, it's  
3           dangerous, you don't want to get hurt.

4           SENATOR RICE: You have to check the  
5           property; okay. We're changing that.

6           So if you can get back to us, we'd appreciate  
7           it.

8           MS. WHITE: How do you get rid of this alarm  
9           guy? How do you get someone like him to get  
10          recourse?

11          SENATOR RICE: The thing is that I'm not sure  
12          but if you can give it to me in writing again, let  
13          my mind work a little. I may come up with  
14          something; I may come up with nothing. But we'll  
15          take it back and let all our heads get together.  
16          Sometimes more minds are better than one then we  
17          still don't have an answer. We proved that quite  
18          a bit with the 120th legislator but sometimes we  
19          do have an answer.

20          MS. WHITE: Well, my thing is just -- my main  
21          concern is getting my daughter in and out of the  
22          house where I can do it. The other stuff we can  
23          work with. But it's late and I'm really tired,  
24          too.

25          SENATOR KARCHER: And you've got five kids.



1 (Discussion off the record.)

2 MAYOR KLEINBERG: Good evening. My name is  
3 Dr. Robert Kleinberg. I'm the Mayor of Marlboro  
4 Township. I would first like to thank you both  
5 for staying here tonight and listening at this  
6 late hour. I'll try to keep my comments short.

7 Basically I never was involved in politics.  
8 I was a homeowner just like everyone in this room  
9 that you spoke to. And actually if you lined up  
10 the people in front of me and say pick out the  
11 mayor I probably couldn't even do it at the time.  
12 How I got involved in politics was through the  
13 experience with my own home.

14 I built a house, a custom built house about  
15 eleven years ago with a builder in our town and  
16 when I closed on the house I noticed from the  
17 initial walk-through I had leak problems; there  
18 were puddles on the floor. And like everyone else  
19 who testified here tonight, they said the builder  
20 said they'll fix it. I had no reason to believe  
21 the builder wouldn't fix it. And in the beginning  
22 the builder would come; and then as time went on,  
23 he would come less; and then I would have to chase  
24 him. And when he sold out the development I could  
25 never find him.



1           One day I figured with not accomplishing  
2           anything with the builder directly, I'll go to  
3           town hall. It was the first time I ever went to  
4           town hall in Marlboro. And basically township  
5           employees couldn't care less about my problems.  
6           They were telling me I'm the only one with the  
7           problem. The problem was pertaining to the stucco  
8           in my house mostly. And that I'm crazy and I'm  
9           the only one and why am I bothering them. Okay.

10           One day I'm in my home, I believe it was  
11           around 1999, because the lawsuit that I'm  
12           embroiled in has gone on way before I was mayor.  
13           I have eight years it's pending this lawsuit. And  
14           one day I saw a show, it was Dateline NBC, a show  
15           that forever changed my life. It showed all the  
16           inherent problems with the synthetic stucco that's  
17           being clad on many homes across the country and in  
18           New Jersey, specifically in Monmouth County. And  
19           that they were saying that there's class action  
20           significance with this; there's class action suits  
21           all across the country. And that the systems were  
22           prone to failure.

23           Well, armed with this new evidence I go  
24           running down to town hall to speak to the building  
25           inspector, to speak to the engineer; they couldn't



1 care less. And it dawned on me that, gee, this is  
2 a very big problem like everyone here who  
3 testified. Their home is their biggest asset and  
4 what it is - I've heard people speak here tonight  
5 that it puts their lives on hold. And that's  
6 exactly what it does when you're living in a house  
7 that you can't fix, you can't enjoy, you can't  
8 sell; you're stuck in it. You're a hostage in  
9 your own home. So I decide I'm going to call some  
10 lawyers.

11 And the one advantage of being the last one  
12 to speak, I got to hear everyone speak and a  
13 little bit of my story is in every one of their  
14 stories. Try to find an attorney in Monmouth  
15 County who will sue a builder who is not in  
16 conflict with one of the officials or engineers;  
17 it's nearly impossible. So calling up some people  
18 who wanted \$50,000 up front and \$200 an hour, and  
19 who wanted \$20,000 up front and \$500 an hour; I  
20 realized I'd go broke if I ever paid an attorney  
21 on an hourly basis. So this is one of these  
22 things in life that I figured I got screwed on and  
23 I'll put my tail between my legs and move on  
24 because there's nothing I can do. The builder  
25 didn't want to do anything; township officials



1 didn't want to do anything.

2           So basically what happened was, one day it  
3 was when the ex mayor before me was going to jail  
4 one day because he pled guilty to taking bribes,  
5 he knocked on my door, Scannapieco that is, I was  
6 living in the Township for years at the time,  
7 about 12 years, I didn't know him, he knocks on my  
8 door, I go who are you. I'm Mayor Scannapieco;  
9 what do you think about living in Marlboro; quite  
10 frankly it sucks; come look at my house. So I  
11 bring him in my house and he goes, Doc -- and I  
12 had ceilings that literally have collapsed. You  
13 can walk in my house today, Senator Karcher, I  
14 invite you to come, that you can see the  
15 Sheetrock, the tape between the Sheetrock just  
16 dangling. It's been going on for almost eight  
17 years -- well, I've been living there for twelve  
18 years, the suit is about eight years, but this has  
19 been going on for about eleven years. And he  
20 says, Doctor, this is terrible. I'm going to get  
21 the building inspector here; I'm going to get the  
22 township engineer. Been there, done that. They  
23 don't care; they don't want to come. Finally they  
24 reluctantly come and they look at it. You know  
25 when you do a deposition and they ask you a number



1 never say an exact number, always say  
2 approximately. Well, I called them a lot of times  
3 and I can say definitively he never called me  
4 back, the mayor.

5 So now I figured, gee, I know there's two  
6 parties, one party controlled the mayor's office  
7 and one party controlled the town council.  
8 Everyone talks about checks and balances in  
9 government with different parties, whatever. So I  
10 figured, and this is way before Senator Karcher  
11 was there, so this is not meant in any way against  
12 Senator Karcher. So I figure I'll go to the other  
13 side and you figure they'll kind of help me out;  
14 they couldn't care less either.

15 It made me realize way back in 2000, way  
16 before there were all the articles in the  
17 newspaper, way before the indictments in Marlboro,  
18 it made me realize we had a three-party system in  
19 Marlboro. We had the Democrats, the Republicans,  
20 and we had a third party, the political insiders  
21 which sublimed the other two and they were making  
22 all these back-door deals. And as we're all  
23 seeing in the newspaper, I was right on the money  
24 because that's what it was.

25 Now, going back to all this. Senator



1 Karcher, I don't know if you realize, but when you  
2 were council president we had the same building  
3 inspector, the same building inspector I was  
4 dealing with all along. Well, one day I decided I  
5 never see this guy when I became Mayor, where is  
6 he, Mr. Cavalieri. They told me, well, Mr.  
7 Cavalieri leaves at 11:00. I go what do you mean  
8 he leaves at 11:00, he's a Township employee, I  
9 figure everyone works 8:00 to 5:00, maybe 7:00 to  
10 3:00 something like that. Well, he had special  
11 hours given to him by Mayor Scannapieco. He  
12 worked from 4:00 a.m. to 11:00 a.m. That was his  
13 official township hours. Well, then we start  
14 looking at his disclosure form that he has to fill  
15 out for the State. He neglected to write that he  
16 was the plumbing inspector for five other  
17 municipalities. Well, it gets better than that.  
18 When we were trying to throw Mr. Spalero out of  
19 his house, we had three township employees who  
20 came and says that they were given specific  
21 instructions from Mr. Cavalieri that we don't  
22 stop, this is a quote from other employees, we  
23 don't stop Spalero developments in our town. So  
24 you figure you're the Mayor, fire him. Well,  
25 guess what, guys, I can't fire him, he has to fire



1 me. Because everyone keeps on saying when they  
2 come up to the microphone that the township  
3 doesn't do the job; it's the township's  
4 inspectors; what I came to find out that I didn't  
5 know when I was a resident but I know now, the  
6 building inspectors work for the State. They're  
7 DCA employees. I can't tell a building inspector  
8 to do anything. They don't work for me, they work  
9 for the State. So I don't know how I'm supposed  
10 to make building inspectors do more when I don't  
11 have any authority over a building inspector.

12 SENATOR RICE: Let me ask you a question.

13 MAYOR KLEINBERG: Sure.

14 SENATOR RICE: Who hires your building  
15 inspectors?

16 MAYOR KLEINBERG: The township hires the  
17 building inspectors but once they're there, we're  
18 stuck with them. Just because they're not doing  
19 the job, I can't get rid of them.

20 SENATOR RICE: No. You're not stuck with  
21 them. If they don't do the job, you can get rid  
22 of them under the Connors Bill. I fought. The  
23 Bill came through my committee. I needed that  
24 Bill and Senator Connors sponsored the Bill. And  
25 the Senators on the issue know many, many years



1           because we couldn't get rid of certain code  
2           officials. And I didn't know it. I spent sixteen  
3           years -- the only reason I knew it is I was Deputy  
4           Mayor not too long ago and we was having a problem  
5           and a Representative said if that's the case, then  
6           just fire the guy. He said I can't, he's in the  
7           union, he's a code official. I can document him,  
8           it takes time, and then I can go to the State.  
9           And that's when I fast tracked the Connors Bill.

10                 So I would hope, if we can, Julius, take a  
11           copy of Senator Connors Bill that we just passed,  
12           get it to the Mayor right away so he's aware of  
13           it.

14                 Because read that Bill, and if you have any  
15           questions, give Bob a call at the State, he'll go  
16           over the law, it's public law now, with you to  
17           make sure that the concerns you have fall under  
18           that legislation. They know you can fire them  
19           under certain conditions now. Because, see, when  
20           you don't catch up on the laws right away, they  
21           watch their turf. They know it. They just figure  
22           that maybe you haven't figured it out yet or the  
23           Bill may not apply to them direct under the  
24           circumstances. But I think you should be aware  
25           of it.



1           MAYOR KLEINBERG: Is this just for code  
2 officials or is this for other employees?

3           SENATOR RICE: This was particularly for  
4 sub-code officials, okay, because of inspectors  
5 that were problematic.

6           MAYOR KLEINBERG: Because we had one incident  
7 with an employee who was a township employee for  
8 seventeen years; he admittedly stated that he  
9 hasn't worked in the last fifteen years from the  
10 time I became Mayor. It took me almost a year to  
11 get rid of him through the Department of  
12 Personnel.

13          SENATOR RICE: That may be a different  
14 situation than the stuff we're dealing with  
15 tonight but the Bill we're talking about is  
16 directly related to this. The other thing is  
17 civil service; we can address that another time.  
18 But I just want you to be aware there is a Bill.  
19 It's a Bill that will help you. It's a Bill we  
20 needed for years in municipalities.

21          MAYOR KLEINBERG: If I may move on,  
22 considering the late hour.

23                 What happened was after I finally got an  
24 attorney, which I did finally get, there was a  
25 whole thing, actually, with the Howell Warranty.



1       The Howell Warranty -- I applaud you because I saw  
2       one of the changes you want to do is define what  
3       structural integrity means. It's one of the most  
4       confusing things, I believe. When homeowners buy  
5       a new home and they get a Howell Warranty they  
6       believe that they have a ten year warranty, like a  
7       car bumper-to-bumper warranty and the first year  
8       is really where all your rights are. And the  
9       builders know that better than the homeowners.  
10      And every builder tells the homeowner, don't  
11      worry, I'm going to fix it. And by the time --  
12      people say, well, why did you wait two years, why  
13      did you wait three years; no, I didn't wait two or  
14      three years. They told me they were going to  
15      come, I trusted them, and they never did it. By  
16      the time they finally tell you they're not doing  
17      it or you realize they're not doing it, you lost  
18      the time limit for remediation, which is unfair.  
19      Up until now basically that according to when I  
20      went to Howell, this is about seven years ago,  
21      they told me that if I would get -- this was  
22      specifically about the stucco. They told me if  
23      all my ceilings were to fall off, all my doors  
24      were to fall off, all my windows and the sides of  
25      my house, as long as I had the floor joists and



1 beams, that according to the 1979 definition of  
2 structural integrity and load bearing, it's  
3 structurally sound, which the average person never  
4 explained that wouldn't know.

5 Going back again to my own house. I had  
6 approximately a dozen Uniform Construction Code  
7 violations, which I found out; however, in  
8 Marlboro Township passed with flying colors and  
9 they gave a C of O.

10 The driveway, there's an ordinance in  
11 Marlboro that there has to be five inches of stone  
12 under two inches of blacktop. Guess what? In my  
13 house they forgot to put the stone, they just  
14 poured the blacktop atop. Of course the thing  
15 collapsed.

16 The grading, the grading on my house has  
17 absolutely no resemblance to what the Planning  
18 Board approved; however, it was passed.

19 When you go back to a township like we had in  
20 Marlboro years ago, because it was so corrupt,  
21 they intentionally kept -- files are missing,  
22 papers in the files are missing. There should be  
23 something to limit the amount of engineers who  
24 could work on these files because it was  
25 intentional chaos. Because it was so chaotic, you



1 can't even follow anything; it becomes that hard.

2 And that's another issue we're dealing with  
3 in the township. What people don't seem to  
4 understand, which I didn't understand until I was  
5 the Mayor, everyone says, well, why doesn't the  
6 Township do anything about it; why can't the  
7 person who's being wronged pay less tax? It's  
8 almost impossible to hold the township liable for  
9 anything. I'm not saying this is right. I'm just  
10 saying you can have officials who stray, who have  
11 done terrible things. I mean, all of us, I don't  
12 know -- Senator Karcher, I don't know you well,  
13 but I'm sure any one of us who are elected  
14 officials, you hear these heart wrenching stories;  
15 we would want to fix all these things for these  
16 people. The law doesn't allow.

17 You know when we go to court with the  
18 builders, you know there's things we know for a  
19 fact intuitively, we're so right on the money,  
20 doesn't mean we're going to win in courts in  
21 Monmouth County. We had a case where had the  
22 engineer sitting in the audience at the time,  
23 Mr. Schultz saying when residents were coming to  
24 me as the Mayor saying, why do we have so many  
25 drainage problems, Marlboro Summit. And ask



1 Mr. Schultz in an open forum, was there a better  
2 way known to do this; yes. Well, why did you  
3 approve it this way; well, it saved the builder  
4 money.

5 Now, what happened was when you go to court  
6 they're saying, well, this is the wrong forum.  
7 Let the individual homeowners fight with their  
8 builder. You can't hold up a bond release. We  
9 have to give back bond releases.

10 We actually had, just to show you conflicts  
11 of interest in this State, how sickening it is.  
12 We had a township engineer, he was the principal  
13 in a major engineering firm that did a lot of work  
14 in the town representing applicants. Scannapieco  
15 then appoints him to be the township engineer. He  
16 still retains shares of the company. And he was  
17 allowing -- while he was the township engineer he  
18 was allowing that company to do bond releases and  
19 inspections, and approving applications, doing  
20 final approvals himself on applications where he  
21 started out as the applicant's engineer.  
22 Additionally we found out he had a social  
23 relationship. That particular builder, according  
24 to township employees, didn't have to go through  
25 the regular inspection process. And you know



1        what, doesn't matter in this State because they're  
2        allowed to do it apparently because nobody said  
3        they can't do it.

4                This is the frustration. I want to help  
5        people. I've been in Mrs. Stoler's house; she's  
6        not lying. She has no Sheetrock on her walls; you  
7        look through it. The problem we had with the  
8        Montgomery Township case that came down that said  
9        townships were allowed to go after on a later date  
10       and go after the builders and give them  
11       violations; well, there's a lot of problems with  
12       that.

13               First of all, we also have to give a  
14       violation to the homeowner, also. That's one  
15       problem. And then what happened was once you do  
16       this, as someone testified earlier today, once you  
17       go through this, once you file -- if you have any  
18       lawsuit pending, you can't do anything. The State  
19       tells you that if someone has a lawsuit because  
20       they've been dealing with a builder for five  
21       years, ten years and at a loss, they don't know  
22       what to do, they finally get a lawyer and  
23       institute a lawsuit because there's a statute of  
24       limitations. The bottom line is once you do that,  
25       it precludes you from any other remedy with that



1 Uniform with giving the violations. So that's a  
2 problem.

3 I can go on and on. I know it's late.

4 One thing that I did think about a lot that I  
5 think would be a very good thing, in the State of  
6 New Jersey we give everybody a license. I'm a  
7 chiropractor, I need a license; lawyers need a  
8 license. We even license dogs in the State of New  
9 Jersey. What we should do, we license plumbers  
10 and electricians, why not license contractors in  
11 their area of specialty. You're a stucco  
12 applicator, get a stucco license where there  
13 should be a minimum competency exam. If you're a  
14 framer, get a framer's license.

15 SENATOR KARCHER: That was recommended by the  
16 SCI report and I mentioned that earlier that that  
17 needs to be addressed.

18 MAYOR KLEINBERG: I think that would be a  
19 great thing so this way, look, if I mistreat a  
20 patient, what am I afraid of, they'll pull my  
21 license is the ultimate thing. So the whole thing  
22 is this way it gives accountability. And just  
23 like the State has sought fair to do with let's  
24 say insurance producers that if you're convicted  
25 of doing something wrong by the Commissioner, if



1       you're found guilty of something by the  
2       Commissioner, what happens, you lose your  
3       license. If it's an organization, I believe you  
4       can't apply for ten years for a license. If it's  
5       an individual, you can't apply for five years. I  
6       just think it would be a good thing to have some  
7       accountability and that we can get back to them.

8               The last thing I'd like to say, Mr. Attner, I  
9       was reading the article in the paper today and he  
10      said something today that I actually called him  
11      today to tell him I agreed with him. You really  
12      can't legislate morality, and that's what it comes  
13      down to. We can pass the legislature, we can pass  
14      all the laws in the world; if people are going to  
15      be corrupt, people are going to do bad things, it  
16      doesn't matter because you're going to have some  
17      smart attorney and some smart politician who will  
18      want to be corrupt to figure how to circumvent any  
19      law that you put out there. We need to have  
20      honest people in government.

21              I thank you all for listening. And may I say  
22      good night.

23              SENATOR RICE: The individual you said, you  
24      don't have to respond, we are leaving it's getting  
25      late. We're going to look at the case. You're



1 right, we're law makers, you know that. We're  
2 going to write the law as we see fit. I'm just  
3 not one. I try to do what's right. I think if we  
4 go too far beyond, pretty soon we're going to go  
5 so far from ethics that you're not going to have  
6 anybody working for anybody, anybody married to  
7 anybody, et cetera. But we have to have ethics.

8 I think we need some enforcement of laws and  
9 hold strictly people liable for their actions. I  
10 think that's the problem. Politicians would say  
11 to the people in the communities, well, we'll just  
12 dissipate it, play it tight. There's always a  
13 politician at election time will say and we can  
14 add this piece, too. We can add to infinity,  
15 unless we enforce what we have. It's the same  
16 thing with some of the other laws. So you're  
17 right. Some of this is state responsibility. And  
18 somebody has to oversight municipalities when they  
19 get a continuum of complaints, if you will.

20 But I think it's a new day now. You have a  
21 great Senator representing this district. I'm  
22 saying that. I know that because I work with  
23 her. See, one thing about me, I like to travel  
24 the state because I get to hear people talk about  
25 us and talk about me and my district. And I say



1       you know what, you can talk about this man but I  
2       happen to work with him and I know him. So maybe  
3       you see him differently, but I know the job that  
4       we have to do that you have to do as Mayor.  
5       People don't know the job. You have to do a job  
6       there. The people work for you know what you're  
7       doing. The Senator and I have to do jobs in  
8       Trenton. There's a lot going on that the public  
9       don't know about that we're trying to help them  
10      with. The media never give us a break. We get a  
11      one liner. They interview you. They change  
12      everything you say and the public buy that. So we  
13      know that. But we also spend this kind of time,  
14      most of us who are committed, to hear from people  
15      like yourself.

16                So we're going to go back and see what we  
17      have. Anything you can give us in writing in  
18      terms of some of the things you said today; take a  
19      look at changing this; take a look at changing  
20      that. Please make sure that staff have your  
21      number; they can get that Bill out to you.

22                Let me thank everybody from my perspective,  
23      Senator I want to thank you, too, for being so  
24      patient and kind to invite me down here. I've  
25      learned a lot. I've got to reinforce a lot of



1 things that are in the Bill. I got some good  
2 notes here on comments that came out that we want  
3 to go back and take a look at trying to put in the  
4 Bill. We may have, like I said, a squad  
5 inspection force soon to oversee the overseers of  
6 the overseers. But we're going to do something to  
7 help you. Thank you very much and good night.

8 SENATOR KARCHER: I just want to thank  
9 Senator Rice for coming out this evening to the  
10 heart of Monmouth County. I think it was a very  
11 productive evening. I want to thank everyone who  
12 held on to the bitter end here. And I do hope we  
13 can put together some meaningful legislation  
14 that's going to help you and help those who are  
15 going to be coming after you.

16 Thank you.

17 (The hearing was concluded at 12:00 a.m.)

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C E R T I F I C A T E

I, KAREN L. DeLUCIA, License No. XI01888, a  
Certified Shorthand Reporter and Notary Public of  
the State of New Jersey, do hereby certify the  
foregoing to be a true and accurate transcript of  
my original stenographic notes taken at the time  
and place hereinbefore set forth.

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Karen L. DeLucia, CSR

Dated: September 27, 2006



